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WAGE & SALARY STABILIZATION

WAR LABOR REPORTS

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Regulations, Orders, and Decisions with Index-Digest

NATIONAL WAR LABOR BOARD
BUREAU OF INTERNAL REVENUE
OFFICE OF ECONOMIC STABILIZATION

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The cases are arranged alphabetically. Each case is identified by name and number and is followed by a statement of the region or commission by which the case was originally decided, the volume and page reference in War Labor Reports where the decision is reported, the party on whose petition appeal was taken, and the action taken upon it. If the review is on the Board's motion, it is so stated.

Star (★) indicates new items or items on which action was taken since prior appearances on this list.

East Side Busses, Inc., et al. (No. 111-12585-D—Region XII). Decision of Region XII (25 War Lab. Rep. 181) amended on petition for review (26 War Lab. Rep. 93).

General Motors Corp. (No. 111-4503-D). Decision of NWLB (22 War Lab. Rep. 484) amended on petition for review (26 War Lab. Rep. No. 1, XXXV).

Metz Mfg. Co. (No. 2179-D). Decision of NWLB (19 War Lab. Rep. 498) amended on petition for review (26 War Lab. Rep. No. 1, XXXVI).

New York Herald-Tribune (No. 111-8188-D). Decision of Newspaper Commission (22 War Lab. Rep. 430) amended on petition for review (26 War Lab. Rep. 18).

Reynolds Metal Co., Inc. (No. 111-10661-HO [5-HO-1012]—Region V). Decision of Region V (24 War Lab. Rep. 360) amended on petition for review (26 War Lab. Rep. 95).

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Finding List
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This is a finding list of all the currently effective laws, orders, regulations, and official interpretations affecting wage and salary stabilization and the settlement of wartime labor disputes which appear in text in the first 25 volumes of War Labor Reports.

The arrangement of the entries in the finding list is in alphabetic sequence by subject. The same item may appear in a number of places so as to be available when the user approaches it from different points of view. The entries in the list include the title, date, and number, if any, of the document and a brief characterization for identification purposes.

References to bound volumes give volume number in arabic numerals and page numbers in roman numerals, while references for volumes 22 through 25, which have not yet been issued in bound form, show the volume and issue numbers in arabic and the page number in roman numerals.

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Regulations, Part 802, Amended *

PART 802—RULES OF PROCEDURE

II. Rules for the Conduct of Hearings Under Sec. 7 of the War Labor Disputes Act

Sec. 802.25—Panel Report and Comments

(a) General * * *

(b) Procedure in Cases Involving Price Relief or Increases in Production Cost

If the panel report recommends a wage or salary adjustment, there shall be transmitted to the employer, together with a copy of the panel's report, a request that he transmit, within the period allowed him for filing comments upon such report, information on the following points:

(1) Whether he has a contract with any procurement agency of the United States Government for furnishing any product or service and, if so, (a) the name of such agency and the contract number, (b) whether the granting of the wage or salary adjustment recommended by the panel may result in an increase in the cost of the product or service to the United States under such contract, and (c) what part, if any, of such adjustment may be granted without resulting in an increase in such cost.

(2) Whether the granting of the wage or salary adjustment recommended by the panel will be made the basis for an application by the employer to the Office of Price Administration for an adjustment of his individual maximum prices or for a petition for an amendment of a regulation which establishes maximum prices for his product or service and, if so, what part, if any, of such adjustment may be granted without requiring such price relief.

(3) The employer shall be advised at the same time that, if he intends to seek price relief from the Office of Price Administration in the event a wage or salary increase is directed, he must, within 15 days after the receipt of the panel's report, file with the nearest office thereof an appropriate application for such relief and notify the Board or its agent, as the case may be, of such filing within the time allowed him for transmitting comments on the panel's report. If the employer advises the Board or its agent that the granting of a wage or salary increase will be made the basis of an application for price relief or may result in an increase in the cost to the United States Government of his product or services, he shall at the same time (a) transmit to the union a copy of his statement to that effect and (b) notify the Board or its agent of the date of such transmittal.

The union may, within ten days after receiving a copy of such statement from the employer, file with the Board or its agent its comments thereon. Fifteen copies of such comments shall be furnished.

(4) For procedure to be followed where the panel recommends denial of an increase and the Board or its agent reverses such recommendation or modifies the panel's recommendation upward or hears the case on its merits, see Sec. 802.57(b)(1) of the Rules of Procedure as amended. (Approved July 4, 1945)

Sec. 802.29—Appointment of Arbitrator

(b) Selection of Arbitrator

In the National Board, the Disputes Division shall select a name from a list of persons who have been approved by the Board for service as arbitrators. In the case of the appointment of an impartial chairman, however, the proposed name shall be submitted for approval to the labor and industry members of the Board. Board agents shall appoint arbitrators as provided in Sec. 2.51 (d). Unless the parties otherwise agree, the appointment of an arbitrator shall not be delegated by the Board to an association, agency, or individual. (Issued June 13, 1945)

Sec. 802.51 — Constitution of Regions and Regional War Labor Boards

(d) * * *

Whenever a regional war labor board or industry commission or the

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* Ed. Note: This compilation includes all amendments issued by the War Labor Board since publication of the "Rules of Organization and Procedure" at 21 War Lab. Rep. V. The present amendment, which affects Sec. 802.25 (b) and 802.57 (b) (1), was issued by WLB Press Release B-2102C, Aug. 3, 1945.

"The amendment amplifies that part of the procedure which provides that employers who intend to seek price relief if a wage increase is granted must do so within 15 days after receiving the panel report if the report recommends a nincrease." (Information supplied by WLB staff.)

New Case Committee or any such Board agent determines that a particular dispute case can be more effectively handled if the industry member of the panel is selected from the same industry as the company involved in the dispute and the labor member of the panel is selected from the same international which is involved in the dispute, the Board agent shall have authority to designate such members. The industry member shall not have any primary or other interest in the company involved in the dispute, and the labor member shall not be a member of the local union involved in the dispute, nor shall he have participated in any of the negotiations in connection with the dispute. (Approved July 4, 1945)

VI. Jurisdiction and Procedure of Regional War Labor Boards

Sec. 802.57—Authority of Regional War Labor Boards

(a) Applications for Approval of Voluntary Wage and Salary Adjustments * * *

(b) Directive Orders in Dispute Cases

(As amended July 4, 1945)

(1) Regional War Labor Boards are authorized to issue directive orders in dispute cases in conformity with the policy of the National War Labor Board. Each such directive order shall bear the date of its actual issue and shall be issued to the parties when made. The issuance of any provisions of a directive order, however, which relates to a wage or salary adjustment, may be stayed if two or more public members of the Regional Board dissent from the provision and request that its issuance be stayed. In such event, a copy of the directive order and the request for the stay, together with a statement of the reasons for such request, shall be immediately transmitted to the National War Labor Board. The provision so sought to be stayed shall not be issued to the parties until the expiration of ten days after receipt in Washington of the request for the stay unless (i) the issuance of such provision is earlier approved by the National War Labor Board or (ii) within such ten-day period the National War Labor Board sets the case down for review. In the latter event, the executive assistant to the National War Labor Board shall communicate the Board's action to the Regional Board, and the stay shall continue in effect until the case is finally disposed of.

If the panel recommends denial of an increase and the Regional Board overrules such a recommendation or where the Regional Board modifies upward the panel's recommendation or where the Regional Board itself hears the case on its merits, the Regional Board shall notify the employer at the time of the issuance of its directive order that, if he intends to seek price relief from the Office of Price Administration, he must, within 15 days after the receipt of the directive order, file with the nearest office of the OPA an appropriate application for such relief. All other information as required in Sec. 802.25 (b) shall be submitted to the Board in the same manner as therein described. If application for price relief is made within the time allowed, then the directive order shall become effective only when the Office of Price Administration has determined that the wage increase ordered will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization.

Regulations, Part 803, General Orders, Amended

GENERAL ORDER No. 4 *

Sec. 803.4—Wage Adjustments for Small Business.

(d) * * *

Extension of General Order No. 4

The National War Labor Board, under this paragraph, has approved the following exceptions to the exemption provided for in Par. (a) of this order:

(55) All employers in the retail fur industry in Allegheny County, Pa. (Approved Apr. 11, 1945)

(56) All employers in the bakery industry in Cuyahoga County, O. (Approved Apr. 12, 1945)

(57) All employees in the fur industry in Boston, Mass. (Approved Apr. 18, 1945)

(58) All employees in the logging industry and the saw mill industry in Gogebic, Ontonagon, Houghton,

* Ed. Note: This compilation includes all exceptions to General Order 4 issued subsequent to publication of "Regulations, Part 803, General Orders and Interpretations" at 21 War Lab. Rep. XXXVII. The latest amendment in this group is No. 63, WLB Press Release B-2183, Aug. 7, 1945. (Information supplied by WLB staff.)

Keewenaw, Paraga, Iron, Marquette, Dickinson, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa Counties, all in the state of Michigan; and Douglas, Bayfield, Ashland, Iron, Vilas, Forest, Florence, Marinette, and Oneida Counties, all in the state of Wisconsin, including the logging industry area, with the following specific provisions:

(1) That no employee presently in the service of an employer in the logging and saw mill industries in the area referred to above heretofore exempt under General Order No. 4 shall have his or her compensation reduced by reason of this action so long as he remains in the service of that employer.

(2) That new employees of any such employers shall be hired either:

(a) At the rates the employer had in effect Oct. 3, 1942, in respect to wages, or Oct. 27, 1942, in respect to salaries, or

(b) At the rates properly adjusted where no approval is required under the appropriate general order of the National War Labor Board, or

(c) At the rates approved for the particular employer by the Eleventh Regional War Labor Board. (Approved Apr. 16, 1945)

(59) Small firms in the metal plating and enameling shops in Los Angeles County, Calif., which shall be defined as establishments in which one or more employees are engaged in the electro-plating, plating, or enameling of metal products, and establishments in which a majority of the employees are engaged in the polishing of such products. (Approved Apr. 23, 1945)

(60) Summer resorts including resort hotels, boarding houses, adult camps operated for profit, dude ranches, and similar types of establishments throughout New York State and northern New Jersey inclusive of the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren. (Approved May 11, 1945)

(61) Restaurants throughout New York State and Monmouth County, N. J., which are open only between May 1 and Oct. 1 (Approved May 11, 1945)

(62) Commercial garages performing repair work for the public in the Metropolitan Kansas City area. (Approved May 11, 1945)

(63) All shops engaged in welding work in the oil well servicing industry in the County of Lea, State of New Mexico. (Approved May 24, 1945)

(64) The general automobile repair industry in the metropolitan areas of Chicago (defining Chicago as including all of Cook County, Ill., and Lake County, Ind.), Milwaukee, Wis.; Indianapolis, Ind.; and the Twin Cities, Minn.; and also Peoria, Ill. (Approved June 6, 1945)

(65) Retail hardware stores in San Francisco and Alameda Counties, Calif., according to the following definition: Retail hardware stores—stores selling at retail any combination of the basic lines of hardware such as tools, builders hardware and paint and glass, housewares and household appliances, and cutlery. Does not include stores selling paint only, or paint, glass, and wallpaper. (Approved June 20, 1945)

(66) Cleaning and dyeing industry within the city of San Jose, Calif., according to the following definition: Establishments engaged in dry cleaning, dyeing, and/or pressing apparel and household fabrics. (Approved June 20, 1945)

GENERAL ORDER NO. 7 *

Sec. 803.7—Increases in Compliance with Operations of Fair Labor Standards Act

Since Title VI, Sec. 1, of Executive Order No. 9250 [4 War Lab. Rep. VIII, WCDS 21], dated Oct. 3, 1942, states that "nothing in this Order shall be construed as affecting the present operation of the Fair Labor Standards Act" and since statutes and orders of the duly constituted authorities of the several states fixing minimum rates for certain types of workers carry out the true purposes and intent of the Fair Labor Standards Act and are designed and intended to eliminate substandards of living within the meaning of Sec. 2 of Title II of Executive Order No. 9250, the National War Labor Board hereby approves increases in wage and salary rates made in compliance with such statutes and orders; provided however, that, if any changes in such statutes or orders are made or promulgated after Apr. 8, 1943, increases directed thereby which would result in a wage or salary rate in excess of the rate which the War Labor Board establishes as a minimum wage rate by General Order No. 30 [20 War Lab. Rep. XXXII; WCDS 142] may not be made without the approval of the Board. (Approved July 19, 1945.)

* Ed. Note: The amended order was issued Aug. 3, 1945, by WLB Press Release B-2181. General Order No. 7 [20 War Lab. Rep. XIII; WCDS 123] previously provided that approval was needed if increases directed by state laws resulted in a rate in excess of 50 cents an hour, 21 War Lab. Rep. XLV. (Information supplied by WLB staff.)

Meat Packing Commission: Jurisdiction Extended

Resolution of National War Labor Board, Issued July 30, 1945, by WLB Press Release B-1962G

The National War Labor Board has extended the jurisdiction of its Meat Packing Commission, established Mar. 21, 1945 [22 War Lab. Rep., No. 5, XI] (10 F. R. p. 3721, Apr. 6 1945) as follows:

1. In addition to jurisdiction previously conferred on the Meat Packing Commission, it shall have jurisdiction to pass on applications for voluntary wage adjustments to extend the wage adjustments made in the agreement of the five largest meat packing companies with the three major unions in this industry which this Board has heretofore approved to slaughtering and processing plants of these companies not included in the master agreements between the companies and the unions but whose operations are comparable to those of included plants. (Approved July 9, 1945).

a. In addition to jurisdiction previously conferred on the Meat Packing Commission, it shall have authority to pass on agreements made with the independent packers and the unions representing their production employees which extend to slaughtering and meat processing plants of these packers and which are comparable in their operations to the slaughtering and meat processing plants of the five major meat packing companies, (Swift and Co.; Armour and Co.; Wilson and Co.; Cudahy Packing Co.; and John Morrell and Co.), the provisions of the directive orders of this Board dated Feb. 20, 1945 [21 War Lab. Rep. 652], the agreements made by the five major meat packing companies relating to payment for time spent in changing clothes on the premises, the furnishing of work clothes, the furnishing of tools, equipment, and safety devices, the preparing and repairing of tools and equipment; and the extension to 36 hours of the guaranteed workweek [24 War Lab. Rep., No. 3, XXI; No. 5, XXI; and 25 War Lab. Rep., No. 1, XLIII]. Appeal may be taken from any ruling of the Commission on any such application to the National War Labor Board, subject to all of the rules applicable to rulings on Form 10 applications made by Regional Boards and Commissions. (Approved June 26, 1945).

3. The jurisdiction of the Meat Packing Commission shall be broadened to include ruling upon voluntary applications to extend such of the provisions as are appropriate of the agreements made by the five major meat packing companies with the three major unions in this industry to employees outside of the bargaining units represented by those unions who do the same or similar kinds of work as the included employees and whose working conditions and wage rates historically have followed the same patterns. Appeals from denials or modifications of such voluntary applications may be taken in the same manner and on the same grounds as from the rulings of Regional Boards in Form 10 cases. (Approved July 17, 1945).

Summer Holidays: Policy of RWLB V

Unanimous Statement of Regional War Labor Board at Cleveland, Adopted July 19, 1945; Made Public July 21, 1945

The text of the Fifth Regional War Labor Board's resolution follows:

"Resolved that mercantile and service establishments, including retail stores, banks, insurance offices, and other similar establishments, be permitted to pay, without prior Board approval, to their employees who are subject to the jurisdiction of the War Labor Board their regular wages or salaries without deduction for the time not worked by such employees because of the reduction of a 5½ or 6-day workweek to a 5-day or longer workweek during any part or all of the period beginning May 15, 1945, and ending Sept. 15, 1945. It is not intended that this resolution apply to factories or other establishments in which such practice has not been usual. Of course, any company which in the past granted time off during the summer months may continue to do so.

"The resolution of this Board on the same general subject, passed July 5, 1945, is hereby rescinded."

Office of Economic Stabilization—

Regulations, Part 4001, Wages and Salaries, Amended *

Effective July 31, 1945

Sec. 4001.2—Authority of National War Labor Board

The Board shall, subject to the provisions of Secs. 1, 2, 3, 4, and 8 of Title II of Executive Order No. 9250 of Oct. 3, 1942 [4 War Lab. Rep. 8; WCDS 21], and except as otherwise provided in Executive Order No. 9299, of Feb. 4, 1943 [6 War Lab. Rep. V; WCDS 24], prescribing regulations and procedure with respect to wage and salary adjustments for employees subject to the Railway Labor Act, have authority to determine whether any:

(a) Wage payments, or

(b) Salary payments to any employees where the rate at which the salary, exclusive of bonuses and additional compensation and without regard to the contemplated adjustment, computed on an annual basis, is not in excess of $5,000 per annum and where such employee:

(1) In his relations with his employer is represented by a duly recognized or certified labor organization, or

(2) Is not employed in a bona fide executive, administrative, or professional capacity are made in contravention of the Act or any rulings, orders or regulations promulgated thereunder; Provided, That, on and after July 31, 1945, the National War Labor Board shall have exclusive authority, without regard to the limitations heretofore prescribed in Par. (b) of this section, to make such determinations with respect to all wage or salary payments hereafter made to all personnel, both relief and regular crews, employed on all ships, including dry cargo, tankers, barges, and tow-boats engaged in off shore, coast-wise, harbor, and inland waterways activities (outside of the Great Lakes area.) Any such determination by the Board, made under rulings and orders issued by it, that a payment is in contravention of the Act or any rulings, orders, or regulations promulgated thereunder, shall be conclusive upon all Executive Departments and agencies of the Government in determining the costs or expenses of any employer for the purpose of any law or regulation, either heretofore, or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States or for the purpose of determining costs or expenses under any contract made by or on behalf of the United States. Any determination of the Board made pursuant to the authority conferred on it shall be final and shall not be subject to review by The Tax Court of the United States or by any court in any civil proceeding.

On and after July 31, 1945, no increase or decrease in any salary rate of employees employed on all ships in the shipping industry (excluding the Great Lakes area), as defined above, shall be made without the prior approval of the National War Labor Board.

No final determination or ruling made by the Commissioner of Internal Revenue prior to the date of adoption of this amendment shall be deemed to be invalidated thereby. (Issued Aug. 3, 1945).

Sec. 4001.16—Exempt Employers

The provisions of Secs. 4001.10, 4001.13, and 4001.14 shall not be applicable to employers who employ eight or less individuals: Provided, however, That the Commissioner or the Board, as the case may be, may extend these provisions to such employers and to such extent as the Commissioner or the Board may deem necessary for the effective administration of the National wage and salary stabilization program. (Issued July 31, 1945).

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* Ed. Note: These amendments supersede the corresponding sections of the regulations of the Office of Economic Stabilization, appearing at 20 War Lab. Rep. V.

Sec. 4001.2 now grants the War Labor Board exclusive authority to adjust the rates of all employees in the shipping industry outside of the Great Lakes area. The amendment to Sec. 4001.2 permits the War Labor Board and the Commissioner of Internal Revenue to extend wage and salary stabilization regulations to employers of eight of fewer employees. (Information supplied by WLB staff)

War Food Administration—

Regulations, Part 1100, Salaries and Wages of Agricultural Labor, Amended *

Effective Aug. 2, 1945

The revised regulations relative to salaries and wages of agricultural labor issued by the War Food Administrator on June 23, 1945 (10 F.R. 7609 [25 War Lab. Rep., No. 2, III]) are hereby amended as follows:

1. The term "Secretary" is substituted for the term "Administrator" wherever it appears.

2. The term "Secretary of Agriculture" is substituted for the term "War Food Administrator" wherever it appears.

3. The term "Department of Agriculture" is substituted for the term "War Food Administration" wherever it appears.

4. The term "State USDA Wage Board" is substituted for the term "State WFA Wage Board" wherever it appears.

5. The following Subparagraph 6 is added to Sec. 1105.5 (g):

"(6) Workers engaged in hauling agricultural products from the farm to the first point of destination where the workers are hired directly by the farmer are agricultural labor."

6. The following new matter is added at the end of Sec. 1100.10 (e):

"Wage or salary adjustments may be made by a state or any political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing in all cases where such adjustment is of the type referred to in this section. Any such adjustment will be deemed to have received the approval of the secretary."

7. Sec. 1100.8 is amended and revised as follows:

Sec. 1100.8—Procedure for Recommending Establishment of Wage Ceilings

(a) Whenever it is directed by the Secretary or the Director, a wage board shall, and upon its initiative may, hold a public hearing for the purpose of aiding the Secretary in establishing a supplement to the specific wage ceiling regulations as described in Sec. 1100.7 hereof.

For the purpose of such a hearing a member of the staff of the Office of Labor may be appointed to sit as a nonvoting member of the Board. The Board shall give public notice of such hearing at least three days prior to the hearing. Such notice shall contain the time and place of the hearing, the crop or crops to be affected, and the area and type of work involved. Such public notice shall be given by posting in prominent places in the area to be affected and in news stories by paid advertisements in local newspapers of general circulation. The hearing shall be conducted by two or more members of the Board as the Board shall direct. The hearing shall be informal. Testimony shall be taken concerning the type of work to be controlled, the exact area to be subject to control, the crop or crops to be affected, the wage rates paid, and all related matters relative to the establishment of a wage ceiling. All interested persons may appear and testify. A transcript of the record shall be made. The presiding officer shall open the hearing with a statement of its purpose and the rules which will govern. As soon as possible after the hearing is concluded the Board shall prepare its recommendations (which must be approved by at least a majority of the Board) as to the types of employment, wage rates to be paid, crop or crops to be affected, the extent of the area to be subject to control, and other related matters, and forward to the Secretary the report, together with the transcript of the hearing.

Neither the testimony received nor the recommendations of the Board are binding upon the Secretary in establishing a supplement to the specific wage ceiling regulations. Any interested person may file a petition for reconsideration of a supplement to the specific wage ceiling regulations with the wage board administering the regulations or with the Secretary. If such petition is filed with the wage

* Ed. Note: Amends Regulations appearing at 25 War Lab. Rep., No. 2, III, pursuant to Executive Order 9577, which abolished the War Food Administration and transferred the authority of the Administrator to regulate wage and salaries of agricultural labor to the Secretary of Agriculture. The President's order provided, however, that the regulations issued by the Administrator should remain in effect until changed or revoked by the Secretary of Agriculture. (Information supplied by WLB staff.)

board, such board shall forward the petition, together with its recommendations to the Secretary.

(b) A wage board will not recommend to the Secretary a particular supplement to the specific wage ceiling regulations unless a majority of the producers of the commodity covered thereby within the area affected, participating in a referendum or meeting held for that purpose, request the intervention of the Secretary. Such referendum or meeting may be conducted prior to or subsequent to the public hearing referred to in paragraph (a) of this section, or the wage board may take a vote at such hearing on the matter of intervention of the Secretary. The wage board shall give public notice of any meeting held for the purpose of determining the matter of intervention of the Secretary in the manner provided in paragraph (a) above at least three days prior to the meeting. Such notice shall contain the time and place of the hearing, the crop or crops to be affected, and the area and type of work involved and the fact that a vote will be taken. (Issued Jan. 17, 1944, amended June 1, 1944, July 1, 1944, Aug. 8, 1944, Oct. 3, 1944, June 23, 1945, and as currently amended.)

Effective Date

This amendment shall be effective on the 2nd day of August, 1945, at 12:01 a.m., e.w.t.

Salary Stabilization Unit—

Vacations: Pay in Excess of Current Workweek

Issued July 26, 1945

Sec. 1002.13 of Treasury Decision 3295, as amended by Par. 3 of Treasury Decision 5406, provides that vacation pay and pay in lieu of vacation which is computed on the basis of the current workweek may be paid without approval.

The above provision of Treasury Decision 5295 announces the policy which this office will continue to follow. Where the National War Labor Board, however, allows the payment of vacation pay or pay in lieu of vacation on the basis of a workweek in excess of the current workweek, thereby causing an inequity as between employees under the jurisdiction of that office and employees under the jurisdiction of the Commissioner of Internal Revenue, approval to pay vacation pay or pay in lieu of vacation to employees under the jurisdiction of the Commissioner of Internal Revenue on the basis of the workweek in excess of the current workweek may be granted.

Correspondence in regard to this mimeograph should refer to the number and the symbols SSU: WAG.

War Labor Board—

Memorandum Decisions of National War Labor Board

ALBERS MILLING CO. ET AL.—

In re ALBERS MILLING COMPANY, TAYLOR MILLING CORPORATION, and GENERAL MILLS, INC. (doing business as SPERRY FLOUR COMPANY) *and* AMERICAN FEDERATION OF GRAIN PROCESSORS UNION, LOCAL 28130 (AFL). Case No. 111-7214-D, May 15, 1945.

Majority decision of Board amending order of Regional Board X (San Francisco). Public members concurring: Lewis M. Gill, Nathan P. Feinsinger, Lloyd K. Garrison, and George W. Taylor. Employer members concurring: Hoey Hennessy, Earl Cannon, S. Bayard Colgate, and Vincent P. Ahearn. Labor members dissenting: James A. Brownlow, Robert J. Watt, Carl J. Shipley, and Delmond Garst.

Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor

Board, having granted in so far as it relates to a night-shift differential, the company's petition for review filed in the above entitled case and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The terms and conditions of employment set forth in the Tenth Regional War Labor Board's directive order of Sept. 6, 1944 [18 War Lab. Rep. 639], in this case shall govern the relations between the parties, with the following modifications:

Night-shift differential

A premium of five cents an hour shall be paid to employees on the second and third shifts. *

II. The terms and conditions of employment set forth in said directive order of Sept. 6, 1944, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

CEDAR RAPIDS MOTOR FREIGHT ASSN.—

In re CEDAR RAPIDS MOTOR FREIGHT ASSOCIATION [Cedar Rapids, Iowa] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 238 (AFL). Case No. 111-11766-HO, June 20, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Trucking Commission. Public members concurring: Jesse Freidin, Lewis M. Gill, Edwin E. Witte, and Nathan P. Feinsinger. Labor members concurring: Elmer E. Walker, James A. Brownlow, Delmond Garst, and Carl J. Shipley. Employer members dissenting from acceptance of union petition: S. Bayard Colgate, Horace Horton, William Maloney, and Charles S. Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the union in the above entitled case for review of the Trucking Commission's directive order dated Jan. 15, 1945, hereby takes the following action:

The case is hereby remanded to the Trucking Commission for reconsideration of that part of the said directive order of Jan. 15, 1945, which relates to the issue of issue of vacations. †

COEUR D'ALENE HARDWARE CO.—

In re COEUR D'ALENE HARDWARE AND FOUNDRY COMPANY [Wallace, Idaho] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 551 (AFL). Case No. 111-11599-JB, June 26, 1945.

Majority decision of Board remanding order of Regional Board IX (Denver). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members concurring: James A. Brownlow and John Brophy. Employer members dissenting: Earl Cannon and Vincent P. Ahearn.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the union for review of the Ninth Regional War Labor Board's directive order of Feb. 8, 1945, in the above entitled case, hereby takes the following action:

The case is remanded to the Ninth Regional War Labor Board for bracket determinations and reconsideration of the case in the light thereof. ‡

* ED. NOTE: The Board found that of the three companies in the area that paid a night-shift differential, two paid five cents for both late shifts, while one paid five cents for the third shift only. (Information supplied by WLB staff.)

† ED. NOTE: The Trucking Commission denied the union's request for two weeks' vacation with pay after five years of service under its "in lieu of" policy, 24 War Lab. Rep., No. 3, XVI, despite the union's claim that its demand is in conformance with industry and area practice.

‡ ED. NOTE: The Regional Board denied the union's request for a wage increase of 50 cents a day for warehousemen on the ground that present rates were above prevailing rates for similar work in the area.

The union, in its appeal, contended that the Board failed to eliminate an intra-plant inequity which was created by a prior Board approval of an increase of 50 cents a day for truck drivers.

COMMERCIAL IRON WORKS—

In re COMMERCIAL IRON WORKS [Los Angeles, Calif.] *and* INTERNATIONAL MOLDERS UNION, LOCAL 374 (AFL). Case No. 111-676-D, Mar. 28, 1945.

Majority decision of Board affirming order of Regional Board X (San Francisco). Public members concurring: Lloyd K. Garrison and Lewis M. Gill. Labor members dissenting on acceptance of company petition: Carl J. Shipley and Robert J. Watt. Employer members dissenting on affirmance of Regional Board action: S. Bayard Colgate and Charles S. Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the directive order dated Oct. 25, 1944, of the Tenth Regional War Labor Board, hereby decides the dispute between the parties and orders:

I. The directive contained in a letter dated Oct. 25, 1944, entered in the above entitled case by the Tenth Regional Board, is hereby affirmed and adopted as the order of the National War Labor Board. *

II. The terms and conditions of employment set forth in said directive order of Oct. 25, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

GENERAL MOTORS CORP.—

In re GENERAL MOTORS CORPORATION *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (CIO). Case No. 111-4503-D, July 6, 1945.

Amending 22 War Lab. Rep. 484.

Majority decision of Board amending prior order. Public members concurring: Dexter M. Keezer and Edwin E. Witte. Labor members concurring: Delmond Garst and Robert J. Watt. Employer members dissenting: Earl N. Cannon and S. Bayard Colgate.

Amended Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the union's request for an amendment of the National War Labor Board's directive order of Mar. 1, 1945, in the above entitled case, hereby orders:

Par. II of the directive order of Mar. 1, 1945, in so far as it relates to the Delco Products plant of the General Motors Corporation located in Dayton, Ohio, is hereby amended to provide for check-off of union dues in the amount of $1.50, to be effective the first check-off date after July 6, 1945.

JULIUS KAYSER & CO.—

Decision of National Board

In re JULIUS KAYSER AND COMPANY [Brooklyn, N. Y.] *and* TEXTILE WORKERS OF AMERICA (CIO). Case No. 111-6452-D, May 29, 1945 (made public July 23, 1945).

Majority decision of Board amending decision of Regional Board II (New

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* ED. NOTE: The union stated before the Regional Board that it did not represent a majority of the employees. The Board directed, therefore, that the union should be entitled to recognition, a written contract, and union security if, "within 60 days from the date of issuance of this directive order, the above entitled union shall obtain from the National Labor Relations Board a ruling that said union is entitled to recognition as the exclusive bargaining unit for the employees."

Subsequently, the chairman of the Regional Board requested a statement on the question of representation from the regional director of the NLRB. The regional director replied that he "assumed" that his office should decide the question and stated that the union was, in fact, entitled to exclusive representation because of the existence of a previous certification issued after a consent election which involved no national action. He asserted that the loss of majority because of delay of governmental agencies should not invalidate the certification.

Copies of this letter were sent to the parties, but the company protested. The union thereupon claimed that the company had failed to comply with the Board's directive, and a show-cause hearing was held at which the company was informed that the letter of the NLRB regional director satisfied the requirements of the directive order. The parties were ordered to sign an agreement within ten days.

The company filed a petition for review but was informed by the Regional Board that the chairman's letter was a finding of non-compliance and could not, therefore, be appealed.

York). Public members concurring: Lewis M. Gill and Nathan P. Feinsinger. Labor members dissenting on Par. I: Delmond Garst and Elmer E. Walker. Employer members dissenting on Par. II: Fred Climer and Hoey Hennessy.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted the company's petition, in so far as it relates to wage rates for elevator operators, for review of the directive order dated Oct. 23, 1944, of the Regional War Labor Board of the Second Region issued in the above entitled case and having reviewed the merits of the case with respect to the above mentioned issue, hereby decides the dispute between the parties and orders:

I. Wage rates for elevator operators

Par. I(d) of the said directive order which relates to this issue is hereby vacated, and the present rate for elevator operators shall remain unchanged.*

II. The remainder of the petition for review is hereby denied.

III. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in said directive order dated Oct. 23, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intentions of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

METZ MFR. CO.—

In re METZ MANUFACTURING COMPANY [Dubuque, Iowa] *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1646 (AFL). Case No. 2179-D, May 22, 1945 (made public Aug. 1, 1945).

Amending 19 War Lab. Rep. 498.

Unanimous decision of Board extending prior order. Public members concurring: Lewis M. Gill and Edwin E. Witte. Employer members concurring: J. Holmes Davis and Clarence O. Skinner. Labor members concurring: James A. Brownlow and Van A. Bittner.

Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order No 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders, in addition to the terms and conditions of employment set forth in its directive of Oct. 4, 1944, 19 War Lab. Rep. 498, the following: †

The Board ordered standard maintenance-of-membership and compulsory check-off clauses.

PANTHER-PANCO CO., INC.—

In re PANTHER-PANCO COMPANY, INCORPORATED [Chelsea, Mass.] *and* UNITED RUBBER WORKERS OF AMERICA, LOCALS 156 and 209 (CIO). Case No. 111-8383-D, May 14, 1945 (made public July 23, 1945).

Majority decision of Board amending order of Regional Board I (Boston). Public members concurring: Lewis M. Gill and Edwin E. Witte. Employer members concurring: George Bahrs and William Maloney. Labor members dissenting from acceptance in part of company petition and night-shift differential: Delmond Garst and Elmer E. Walker.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of

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* ED. NOTE: The Regional Board had directed certain wage increases on the basis of substandards and comparisons with other plants. It also directed additional adjustments to maintain differentials; including an increase of nearly five cents for elevator operators. These employees were already receiving a rate which was a fraction of one cent above the established bracket.

† ED. NOTE: On Oct. 4, 1944, the Board denied a union-security award because the union, together with other locals representing employees of a millwork company, engaged in a wartime strike. The directive provided that the union could petition for reconsideration six months after the resumption of work.

At the expiration of this penalty period the union requested maintenance of membership and check-off on grounds that it has maintained a full and uninterrupted work schedule since Aug. 24, 1944.

The company contended that this request should be denied because it has small labor turnover, its relationship with the union makes these agreements unnecessary, and such provisions would burden the already overworked bookkeeping department.

June 25, 1943, the National War Labor Board, having granted in part the petition filed by the company for review of the directive order dated Dec. 21, 1944, issued by the Regional War Labor Board for the First Region in the above entitled case and having reviewed the merits of the case in so far as it relates to a night-shift differential, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the First Regional War Labor Board's directive order of Dec. 21, 1944, in this case shall govern the relations between the parties, with the following modification:

Night-Shift Differential. The said directive order with respect to this issue is hereby modified to provide for the payment of a differential of four cents on the second shift and eight cents on the third shift.*

II. The remainder of the petition is hereby denied.

III. The terms and conditions of employment set forth in said directive order of Dec. 21, 1944, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

SOUTHERN COTTON OIL CO.—

In re SOUTHERN COTTON OIL COMPANY [Chicago, Ill.] *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, LOCAL 80 (CIO). Case No. 111-9664-D, May 30, 1945.

Majority decision of Board amending decision of Regional Board VI (Chicago). Public members concurring: Lewis M. Gill, Nathan P. Feinsinger, and Dexter M. Keezer. Labor members dissenting on acceptance in part of company's petition: Delmond Garst, Carl J. Shipley, and James A. Brownlow. Employer members dissenting on Pars. I A and II: Hoey Hennessy, Walter Knauss, and Earl Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted in part the petition filed by the company for review of the directive order dated Feb. 1, 1945, of the Regional War Labor Board for the Sixth Region issued in the above entitled case and having reviewed the merits of the case, in so far as it related to wages for chief engineers and stationary engineers, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Sixth Regional War Labor Board's directive order of Feb. 1, 1945, in this case shall govern the relations between the parties with the following modification:

Wage Rates:

Par. 2 of the said directive order which relates to wage rates for chief engineers and stationary engineers is hereby modified to provide that an increase of 10 cents an hour instead of 13 cents an hour be granted to the engineers.†

II. The remainder of the petition for review is hereby denied.

III. The terms and conditions of employment set forth in said directive order of Feb. 1, 1945, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

TEXAS TEXTILE MILLS, INC.—

In re TEXAS TEXTILE MILLS, INCORPORATED [Dallas, Tex.] *and* TEXTILE WORKERS UNION OF AMERICA, LOCALS 617 and 618 (CIO). Case No. 111-8468-D, May 21, 1945.

Majority decision of Board modifying order of Regional Board VIII (Dallas). Public members concurring: Lewis M. Gill and Lloyd K. Garri-

* ED. NOTE: The Regional Board awarded premiums of 5 and seven and one-half cents for the second and third shifts, respectively, on the basis of area practice. The National Board modified the order to conform to the nation-wide rubber industry pattern established in its directive order of Apr. 13, 1945, 23 War Lab. Rep. 404. It had been the policy of the Board to treat rubber plants on a national rather than regional basis.

† ED. NOTE: Although the union requested an increase of 10 cents, the Regional Board awarded a 13-cent increase on the basis of intra-plant inequities which it determined by means of inter-plant comparison. It found that the company's rate structure was related to the rate structure of the meat packing industry with the exception of engineers. Its award was made to bring the rate of these employees into the same relationship with the remaining rates in the plant as was the case in the meat packing industry. The National Board reduced the increase to the ten cents originally requested by the union.

son. Labor members dissenting on Par. I: Carl J. Shipley and Elmer E. Walker. Industry members dissenting on Par. II: Vincent P. Ahearn and William Maloney.

Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered that part of the company's petition for review of the Eighth Regional War Labor Board's directive order of Oct. 20, 1944, in the above entitled case, which relates to a night-shift differential, and having on its own motion reconsidered its action of Feb. 20, 1945, with respect to the wage issue, hereby orders:

I. In the light of the order of the National War Labor Board dated Feb. 20, 1945, in the 23 Southern Cotton Textile Companies cases (111-5110-D et al.) [21 War Lab. Rep. 793], and in view of the short time elapsing before the expiration of the contract in the above entitled case, the Board makes the following disposition of the case.

1. Sec. 10 of he Eighth Regional Board's directive order of Oct. 20, 1944, is modified by eliminating the provision for a second-shift differential and reducing the third-shift differential to five cents.*

2. Sec. 11 of the said order of Oct. 20, 1944, is modified to provide that the general across-the-board increase ordered therein shall be 10 cents an hour, retroactive to June 5, 1944.†

II. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in said directive order of Oct. 20, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

WESTERN ELECTRIC CO., INC.—

In re WESTERN ELECTRIC COMPANY, INCORPORATED *and* WESTERN ELECTRIC COMPANY EMPLOYEES ASSOCIATION, INCORPORATED (NATIONAL FEDERATION OF TELEPHONE WORKERS, Ind.). Case No. 111-15358-D, May 15, 1945 (made public July 1, 1945).

Unanimous decision of Board extending contract. Public members concurring: Edwin E. Witte and Dexter M. Keezer. Employer members concurring: George Bahrs and William Maloney. Labor members concurring: Delmond Garst and Elmer E. Walker.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby orders:

The contract, as signed by the parties on May 1, 1944, and as completed by the Board by its order of Mar. 22, 1945 [24 War Lab. Rep. 525], in case No. 111-8106-D, shall continue in effect as if the terminal date had not been reached until such time as the parties or the Board determine the terms of a new contract. This extension does not affect the operation of the petitions for reconsideration filed by the parties, which affect a temporary stay of those portions of the order of which reconsideration is requested.

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* ED. NOTE: The Regional Board directed a second-shift premium of 5 cents and directed that, in the event that a third shift was placed in operation, employees on the third shift should receive a differential of seven and one-half cents.

† ED. NOTE: The Regional Board granted a general increase of 7.5 cents, thus raising the company's minimum rate for beginners to 47.5 cents. Its decision was based on the National Board's order in the case of the 59 Cotton Textile Companies (2 War Lab. Rep. 345).

Action of National War Labor Board and Subsidiary Agencies on Wage Agreements

CORRECTION—COAL OPERATORS

War Labor Board Correction Issued by WLB Press Release B-2075 E, Made Public July 21, 1945

The War Labor Board has issued the following correction to its letter of July 12, 1945, to the anthracite coal operators appearing at 25 War Lab. Rep., No. 4, XVII. The corrected letter will be substituted in the bound volume of 24 War Labor Reports.

"The letter of the Board granting permission to anthracite coal operators to pay to certain employees not covered by the agreement with the United Mine Workers the same travel-time payments and night-shift differentials contained in the union agreement under specified conditions is the official letter sent to the operators. It is to be substituted for the letter which was mistakenly attached to Press Release B-2075D of July 12. The letters are substantially the same except that in the official letter there is no limitation in the Board's approval that the travel-time allowance of $1.132 a day cannot exceed an increase of 15 per cent."

Text of Letter

The National War Labor Board cannot approve the application of the anthracite coal operators dated May 25, 1945, for increases to their "exempt" employees as presented for approval. This is an application for the following wage increases to all employees not included within the bargaining units to which the agreement is applicable which this Board approved, with modifications, in Case No. 111-15451-D [24 War Lab. Rep. No. 5, XIX]:

"1. An increase of not more than $1.132 per day (but not exceeding 15 per cent) for employees paid by the hour or day and corresponding adjustments for employees paid by the week or month.

"2. A payment of four cents per hour for employees working on the second shift and six cents per hour for employees working on the third shift, when paid by the hour or day, and a corresponding adjustment for employees paid by the week or month."

While at the time of the filing of this application it was indicated that price relief would be necessary before these increases could be put into effect, Mr. Bruce has now advised us that no additional price relief will be sought on the basis of any increases that may be approved for "exempt" employees.

An increase of $1.132 per day was authorized in Case No. 111-15451-D to all inside workers as a payment for underground travel time, which the United States Supreme Court has held must be paid for as work time. The same increase was approved for the outside workers although they have no underground travel, because their work is carried on in immediate conjunction with that of the inside workers and there has long existed a definite and constant relationship between their earnings and those of the inside workers.

These justifications for a wage increase, however, do not apply to many of the "exempt" employees of the coal companies. It is clear that an increase to the "exempt" employees is not approvable as a payment required by the decision of the United States Supreme Court that underground travel time must be compensated for as work time. It also is clear that the work of many of the "exempt" employees is not as immediately interrelated to that of the employees who received increases in Case No. 111-15451-D as is the work of the outside employees at the mines to the work of the inside employees who had to be increased to compensate them for travel time. This would appear to be undeniable as to employees in the offices of the coal companies located outside of the anthracite region, as well as of most of the employees in offices within the region and of such job classifications as storekeepers, salesmen, and doubtless still other classifications. For this reason, the Board cannot approve the blanket application for increases to all "exempt" employees filed by your committee.

The National War Labor Board can and does hereby authorize the anthracite operators to make increases of $1.132 per day (or the equivalent increases to employees who are paid on a weekly or monthly salary basis) and also to pay the shift premiums sought in your application to "exempt" employees who satisfy the conditions set forth below and upon compliance with the procedural requirements also recited below:

1. Such increases may be granted only to employees who

(a) are employed in and around the mines in job classifications immediately interrelated with those of employees covered by the agreement with the United Mine Workers and perform at least part of their duties in conjunction with the work of such employees; and

(b) have rates of pay which heretofore have borne a definite and constant relationship to the earnings of employees covered by the agreement with the U. M. W.

2. Such increases may be made only if granted to all employees who satisfy the above conditions.

3. Such increases shall not furnish the basis for any increase in prices.

4. Reports in detail upon all increases made pursuant to this grant of authority shall be made to the Third Regional War Labor Board, Stephen Girard Building Philadelphia 7, Pa.

Employees who cannot qualify for increases on the basis outlined above can be granted increases only on approval of the Third Regional War Labor Board (subject to a right of appeal to this Board on the grounds and in the manner applicable to other applications for voluntary wage increases which are denied or modified by Regional War Labor Board). Applications for such increases must be presented separately by the several operators and must set forth in detail the job classifications to be increased and all facts pertinent to a determination whether increases are permissible under the national wage stabilization program Such increases can be approved only under the principles set forth in the Executive Orders and directives of the Director of Economic Stabilization. Of these, the most important is likely to be that increases are permissible up to the minimum of the sound and tested going wage rates for the occupations in question in the area of employment.

In dealing in this manner with your application, we are taking the same action we have taken in relation to the "exempt" employees of the bituminous coal mines, as set forth in a communication to the National Bituminous Coal Wage Conference today. We also can assure you that the Third Regional War Labor Board will give prompt attention to all applications for increases which may be filed by any of the anthracite operators.

Very truly yours,
George W. Taylor,
Chairman.

WALTER KIDDE CONSTRUCTORS, INC.—

Decision of National Board

In re WALTER KIDDE CONSTRUCTORS, INC. [New York, N. Y.] Case No. 2-42767, Apr. 24, 1945.

Ruling

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, the National War Labor Board, having accepted the petition for review of the ruling issued in the above entitled case, hereby takes the following action:

The ruling of the Second Regional War Labor Board of Nov. 10, 1944, which modified the Regional Wage Stabilization Director's ruling of Sept. 7, 1944, is hereby set aside, in so far as it ruled that limitations on future hirings for nonmanual field workers on a construction project should be in accordance with Sec. II-F-2 of General Order 31 for the first year of each project and otherwise in accordance with Sec. II-F-1 thereof, and the Form 10 application in that respect and to that extent is hereby approved; but in all other respects said Form 10 application remains subject to the ruling of the Regional Wage Stabilization Director of Sept. 7, 1944.

Background Facts Supplied by WLB Staff: The Regional Board ordered that, where a project's duration exceeds one year, hirings during the balance of the project's life must conform to the 25-per cent principle set forth in General Order 31 (21 War Lab. Rep. LXV), but when a project runs for less than one year, all hirings must be made in accordance with the 50-per cent principle.

The National Board found that having to hire at starting rates caused difficulty in getting experienced workers, especially in the construction industry where there is little training time and experienced workers are at a premium. The company argued that shifting from one job to another is not considered "labor piracy" on construction jobs as it is in other work, and that an experienced worker cannot go back to a starting rate every time he begins another job.

Personnel Appointments of the National War Labor Board and Subsidiary Agencies

NATIONAL BOARD

WLB Press Release B-2176, Issued July 31, 1945

The National War Labor Board announced the appointment of B. M. Joffe as director of the Division of Administrative Management of the Board to succeed William R. Little who has resigned to accept a position with the Surplus Property Board of the Office of War Mobilization and Reconversion.

Mrs. Ruth Tumbleson, who had been assistant to Mr. Little, has been appointed assistant director.

Mr. Joffe came to the Board in 1942 and has been an economist, budget officer, and assistant director of administrative management. He was formerly with the Works Progress Administration as technical adviser, program analyst, and economist.

Mrs. Tumbleson has been an administrative officer with the National Housing Agency and the Office of Price Administration.

Going Wage Rates of Region III (Philadelphia)

The going wage rates appearing below for this region are new, supplementary determinations issued by the Philadelphia Regional Board since publication of previous compilations of rates at 14 War Lab. Rep. 33—Feb. 16, 1944 (MANUAL OF GOING WAGE RATES, p. 111); *15 War Lab. Rep. W-19—May 24, 1944; 16 War Lab. Rep. W-5—July 5, 1944; 16 War Lab. Rep. W-21—July 12, 1944; 18 War Lab. Rep. W-6—Sept. 20, 1944; 19 War Lab. Rep. W-3—Nov. 8, 1944; 20 War Lab. Rep. W-7—Dec. 27, 1944; 24 War Lab. Rep. W-3—June 13, 1945; 25 War Lab. Rep. W-1—June 27, 1945; 25 War Lab. Rep. W-4—July 11, 1945.*

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PENNSYLVANIA LABOR MARKET AREA

Public Utilities, Water Supply

Job Classification	Rate Per Hour
Distribution Labor	$.69
Utility Men	.75
On and Off Men	.76
Meter Readers	.75
Meter Repairmen	.75
Filter Operators	.74
Operating Engineers, Reciprocating Engine	.77
Operating Engineers, Steam Turbine	$.89
Operating Engineers, Electrical	.74
Firemen	.75

SOUTHERN NEW JERSEY LABOR MARKET AREA

Public Utilities, Water Supply

Job Classification	Rate Per Hour
Distribution Labor	$.66
Utility Men	.73
On and Off Men	.75
Meter Repairmen	.73
Operating Engineers, Electrical	.77

Going Wage Rates of Region V (Cleveland)

The going wage rates appearing below for this region are new, supplementary determinations issued by the Cleveland Regional Board since publication of previous compilations of rates at 13 War Lab. Rep. W-55—Feb. 9, 1944 (MANUAL OF GOING WAGE RATES, p. 163); *16 War Lab. Rep. W-21—June 7, 1944; 16 War Lab. Rep. W-6—July 5, 1944; 16 War Lab. Rep. W-21—July 12, 1944; 17 War Lab. Rep. W-9—Aug. 2, 1944; 17 War Lab. Rep. W-3—Aug. 23, 1944; 18 War Lab. Rep. W-1—Sept. 13, 1944; 18 War Lab. Rep. W-11—Oct. 4, 1944; 19 War Lab. Rep. W-9—Nov. 1, 1944; 19 War Lab. Rep. W-3—Nov. 8, 1944; 20 War Lab. Rep. W-11—Dec. 29, 1944; 22 War Lab. Rep. W-5—Mar. 7, 1945; 24 War Lab. Rep. W-5—May 16, 1945; 24 War Lab. Rep. W-4—June 13, 1945; 25 War Lab. Rep. W-3—June 27, 1945.*

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LEXINGTON, KENTUCKY, LABOR MARKET AREA

Clerical Occupations

Job Classification	Hourly Rate Per Hour	Hourly Range Min.	Hourly Range Max.	Weekly Rate Per Hour	Weekly Range Min.	Weekly Range Max.	Monthly Rate Per Hour	Monthly Range Min.	Monthly Range Max.
Bookkeeper									
A	$.80	$.75	$.85	$32.00	$30.00	$34.00	$138.50	$130.00	$147.50
B	.575	.55	.65	23.00	22.00	26.00	99.50	95.00	112.50
General Clerk									
A*	.725	.675	.775	29.00	27.00	31.00	125.50	117.00	134.50
B	.425	.425	.475	17.00	17.00	19.00	73.50	73.50	82.50
Stenographer									
A	.65	.60	.70	26.00	24.00	28.00	112.50	104.00	121.50
B	.55	.50	.60	22.00	20.00	24.00	95.00	86.50	104.00

*Manufacturing only.

ALLIANCE, O., LABOR MARKET AREA

Machinery and Allied Metal Trades

Job Classification	Rate Per Hour	Range Min.	Range Max.
Tool and Die Maker			
A	$1.30	$1.20	$1.40
B	1.15	1.10	1.20
Tool Room Machine Oper.			
A	1.25	1.15	1.35
B	1.05	.95	1.15

CANTON, O., LABOR MARKET AREA*

Machinery and Allied Metal Trades

Job Classification	Rate Per Hour	Range Min.	Range Max.
Tool and Die Maker			
A	$1.30	$1.20	$1.40
B	1.15	1.10	1.20
Tool Room Machine Oper.			
A	1.25	1.15	1.35
B	1.05	.95	1.15

SPRINGFIELD, OHIO LABOR MARKET AREA

Machinery and Allied Metal Trades †

Job Classification	Rate Per Hour	Range Min.	Range Max.
Captive Shop			
Tool and Die Maker			
A	$1.35	$1.25	$1.45
B	1.20	1.10	1.30
Tool Room Machine Operator			
A	1.30	1.20	1.40
B	1.10	1.00	1.20
Job Shop			
Tool and Die Maker			
A	1.60	1.50	1.70
B	1.30	1.20	1.40
Tool Room Machine Operator			
A	1.40	1.30	1.50
B	1.125	1.025	1.225

TOLEDO, OHIO LABOR MARKET AREA

Stationary Engineers and Firemen

Job Classification	Rate Per Hour	Range Min.	Range Max.
Chief Engineer	$1.35	$1.25	$1.45
Engineer, Stationary			
A	1.20	1.15	1.25
B	1.10	1.05	1.15
Fireman			
A	1.15	1.10	1.20
B	.95	.90	1.00

TUSCARAWAS COUNTY, OHIO LABOR MARKET AREA ‡

Machinery and Allied Metal Trades

Job Classification	Rate Per Hour	Range Min.	Range Max.
Common Labor	$ .70	$ .65	$ .75
Electrician, Maintenance			
A	1.05	1.00	1.15
B	.95	.90	1.00
Lathe Operator, Engine			
A	1.10	1.05	1.15
B	1.00	.95	1.05
C	.90	.85	.95
Lathe Operator, Turret, Hand			
A	1.05	1.00	1.10
B	.975	.925	1.025
C	.90	.85	.95
D	.825	.775	.875
Milling Machine Operator			
C	.80	.75	.85
Screw Machine Operator, Auto.			
C	.70	.65	.75
Tool and Die Maker			
A	1.225	1.15	1.30

* Includes Canton and Massillon.

† Ed. Note: The tool and die rates only are revised. These rates supersede those previously published for this industry at 16 War Lab. Rep. W-24—June 7, 1944.

‡ Includes New Philadelphia and Dover.

WHEELING, W. VA., LABOR MARKET AREA
Clerical Occupations

Job Classification	Hourly Rate Per Hour	Hourly Range Min.	Hourly Range Max.	Weekly Rate Per Hour	Weekly Range Min.	Weekly Range Max.	Monthly Rate Per Hour	Monthly Range Min.	Monthly Range Max.
Manufacturing									
Accounting Clerk A	$.85	$.76	$.94	$34.00	$30.50	$37.50	$147	$132	$162
Bookkeeper									
A	1.00	.90	1.10	40.00	36.00	44.00	173	155	191
B	.70	.63	.77	28.00	25.00	31.00	121	108	134
Bookkeeping Mach Oper A	.70	.63	.77	28.00	25.00	31.00	121	108	134
Calculating Mach Oper. B.	.55	.55	.60	22.00	22.00	24.00	95	95	105
General Clerk B	.55	.55	.60	22.00	22.00	24.00	95	95	105
Payroll Clerk									
A	.75	.67	.83	30.00	27.00	33.00	130	116	144
B	.55	.55	.60	22.00	22.00	24.00	95	95	105
Stenographer									
A	.75	.67	.83	30.00	27.00	33.00	130	116	144
B	.55	.55	.60	22.00	22.00	24.00	95	95	105
Typist-Billing	.55	.55	.60	22.00	22.00	24.00	95	95	105
Typist-Clerk	.55	.55	.60	22.00	22.00	24.00	95	95	105
Non-Manufacturing									
Bookkeeper									
A	.80	.72	.88	32.00	29.00	35.00	139	125	153
B	.60	.55	.66	24.00	22.00	26.50	104	95	115
Bookkeeping Mach. Oper.									
A	.65	.58	.72	26.00	23.00	29.00	113	101	125
B	.55	.55	.60	22.00	22.00	24.00	95	95	105
General Clerk	.45	.45	.55	18.00	18.00	22.00	78	78	105
Stenographer									
A	.65	.58	.72	26.00	23.00	29.00	113	101	125
B	.45	.45	.55	18.00	18.00	22.00	78	78	105
Typist-Clerk	.45	.45	.55	18.00	18.00	22.00	78	78	105

Going Wage Rates of Region VI (Chicago)

The going wage rates appearing below for this region are new supplementary determinations issued by the Chicago Regional Board since publication of previous compilations of rates at 14 War Lab. Rep. W-37—Feb. 23, 1944, and 15 War Lab. Rep. W-1—Apr. 12, 1944 (MANUAL OF GOING WAGE RATES, p. 183); *17 War Lab. Rep. W-1—July 25, 1944 (Special Supplement); 17 War Lab. Rep. W-10—Aug. 9, 1944; 17 War Lab. Rep. W-19—Aug. 30, 1944; 18 War Lab. Rep. W-1—Oct. 11, 1944; 19 War Lab. Rep. W-11—Nov. 1, 1944; 22 War Lab. Rep. W-8—Mar. 7, 1945; 24 War Lab. Rep. W-6—May 16, 1945; 25 War Lab. Rep. W-4—June 27, 1945.*

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CHICAGO, ILL., LABOR MARKET AREA *

Automobile and Truck Repair Service

Job Classification	Rate Per Hour
Automobile Mechanic	$1.10
Truck Mechanic	1.15

Metal Working †

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.105	$1.03	$1.18
B	.955	.88	1.03
C	.70	.65	.75
Assembler, Floor			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.75	.70	.80
Automatic Lathe			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.80	.75	.85
Carpenter			
A	1.025	.95	1.10
B	.925	.86	.99
Drill Press, Radial			
A	1.025	.95	1.10
B	.925	.86	.99
C	.80	.75	.85
Drill Press S&M			
A	1.025	.95	1.10
B	.90	.84	96
C	.775	.725	.825
Electrician			
A	1.105	1.03	1.18
B	.955	.88	1.03
Engine Lathe			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.80	.75	.85
Grinding Machine			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.80	.75	.85
Grinder, Rough			
A	1.025	.95	1.10
B	.90	.84	.96
Guard, Armed	.80	.72	.88
Heat Treater			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.85	.80	.90
Inspector			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.75	.70	.80

* Ed. Note: The rates below supersede those previously published for this industry at 14 War Lab. Rep. W-39—Feb. 23, 1944 (Manual of Going Wage Rates, p. 186.)

† All metalworking industries except die casting, foundries, forges, wire products, batteries, tin cans and other tin ware, power boilers, sheet metal, and vitreous enamel products. The rates below supersede the rates previously published for this industry at 22 War Lab. Rep. W-8—Mar. 7, 1945.

CHICAGO, ILL.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Janitor	$.75	$.70	$.80
Machinist, Maintenance			
A	1.24	1.14	1.34
B	.955	.88	1.03
Machinist, Production			
A	1.24	1.14	1.34
B	1.105	1.03	1.18
Machine Tool Misc.			
A	1.105	1.03	1.18
B	1.025	.95	1.10
Maintenance Man			
A	1.105	1.03	1.18
B	.90	.84	.96
Mechanic			
A	1.15	1.05	1.25
B	.955	.88	1.03
Milling Machine			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.80	.75	.85
Millwright			
A	1.025	.95	1.10
B	.955	.88	1.03
Painter, Brush			
A	1.025	.95	1.10
B	.85	.80	.90
Painter, Spray			
A	1.025	.95	1.10
B	.90	.84	.96
C	.80	.75	.85
Polisher and Buffer			
A	1.025	.95	1.10
B	.955	.88	1.03
C	.80	.75	.85
Screw Mach. Auto.			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.85	.80	.90
Set-Up Man			
A	1.15	1.05	1.25
B	1.025	.95	1.10
Truck Driver	.825	.75	.90
Trucker, Hand	.75	.70	.80
Trucker, Power	.80	.75	.85
Turret Lathe, Hand			
A	1.105	1.03	1.18
B	.955	.88	1.03
C	.80	.75	.85
Watchman	.70	.65	.75
Welder, Hand			
A	1.15	1.05	1.25
B	1.025	.95	1.10
C	.85	.80	.90
Welder, Mach.			
A	1.025	.95	1.10
B	.85	.80	.90
C	.75	.70	.80
Common Labor			
Beginning Rate	.65	..	..
30-Day Rate	.70	..	..
90-Day (Going) Rate	.75	..	..

ROCKFORD, ILL.

LABOR MARKET AREA *

Metal Working †

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assemblers, Bench			
A	$.94	$.84	$1.04
B	.81	.72	.90
C	.63	.56	.70
Assemblers, Floor			
A	.94	.84	1.04
B	.81	.72	.90
C	.68	.61	.75
Automatic Lathe			
A	.94	.84	1.04
B	.81	.72	.90
C	.68	.61	.75
Carpenter			
A	.88	.79	.97
B	.78	.70	.86
Drill Press, Radial			
A	.88	.79	.97
B	.78	.70	.86
C	.68	.61	.75
Drill Press S & M			
A	.88	.79	.97
B	.76	.685	.835
C	.63	.56	.70
Electrician			
A	.94	.84	1.04
B	.81	.72	.90
Engine Lathe			
A	.94	.84	1.04
B	.81	.72	.90
C	.68	.61	.75
Grinding Machine			
A	.94	.84	1.04
B	.81	.72	.90
C	.68	.61	.75
Grinder, Rough			
A	.88	.79	.97
B	.76	.685	.835
C	.68	.61	.75
Heat Treater			
A	.94	.84	1.04
B	.81	.72	.90
C	.71	.64	.78
Inspector			
A	.94	.84	1.04
B	.81	.72	.90
C	.63	.56	.70
Janitor	.60	.55	.65
Machinist, Maintenance			
A	1.06	.96	1.16
B	.81	.72	.90
Machinist, Production			
A	1.06	.96	1.16
B	.94	.84	1.04
Machine Tool Misc.			
A	.94	.84	1.04
B	.88	.79	.97
C	.68	.61	.75

* Includes Rockford, Belvidere, and Freeport, Ill.

† For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede those previously published for this industry at 22 War Lab. Rep. W-30—July 25, 1944 (Special Supplement.)

ROCKFORD, ILL.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Maintenance Man			
A	$.94	$.84	$1.40
B	.76	.685	.835
Mechanic			
A	.99	.89	1.09
B	.81	.72	.90
Milling Machine			
A	.94	.84	1.04
B	.81	.72	.90
C	.68	.61	.75
Millwright			
A	.88	.79	.97
B	.81	.72	.90
Painter, Brush			
A	.88	.79	.97
B	.71	.64	.78
C	.63	.56	.70
Painter, Spray			
A	.88	.79	.97
B	.76	.685	.835
C	.68	.61	.75
Polisher and Buffer			
A	.88	.79	.97
B	.81	.72	.90
C	.68	.61	.75
Screw Mach. Auto.			
A	.94	.84	1.04
B	.81	.72	.90
C	.71	.64	.78
Set-Up Man			
A	.99	.89	1.09
B	.88	.79	.97
Trucker, Hand	.60	.55	.65
Turret Lathe, Hand			
A	.94	.84	1.04
B	.81	.72	.90
C	.68	.61	.75
Watchman	.60	.55	.65
Welder, Hand			
A	.99	.89	1.09
B	.88	.79	.97
C	.71	.64	.78
Welder, Machine			
A	.88	.79	.97
B	.71	.64	.78
C	.60	.55	.65
Common Labor			
Beginning Rate	.50	.....	.....
30-Day Rate	.55	.....	.....
90-Day (Going) Rate	.60	.....	.....

SPRINGFIELD-DECATUR, ILL.

LABOR MARKET AREA *

Metal Working †

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$ .975	$ .90	$1.05
B	.87	.80	.94
C	.78	.73	.83

* Includes Springfield, Decatur, Athens, and Illiopolis, Ill.

† For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede those previously published for this industry at 17 War Lab. Rep. W-34—July 25, 1944 (Special Supplement.)

SPRINGFFIELD, ILL.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Floor			
A	$.975	$.90	$1.05
B	.87	.80	.94
C	.78	.73	.83
Automatic Lathe			
A	.975	.90	1.05
B	.87	.80	.94
C	.78	.73	.83
Carpenter			
A	1.03	.93	1.13
B	.85	.78	.92
Drill Press, Radial			
A	.925	.85	1.00
B	.85	.73	.92
C	.78	.73	.83
Drill Press S&M			
A	.925	.85	1.00
B	.83	.77	.89
C	.74	.69	.79
Electrician			
A	1.03	.93	1.13
B	.87	.80	.94
Engine Lathe			
A	.975	.90	1.05
B	.87	.80	.94
C	.78	.73	.83
Grinding Machine			
A	.975	.90	1.05
B	.87	.80	.94
C	.78	.73	.83
Grinder, Rough			
A	.925	.85	1.00
B	.83	.77	.89
C	.78	.73	.83
Heat Treater			
A	.975	.90	1.05
B	.87	.80	.94
C	.80	.75	.85
Inspector			
A	.975	.90	1.05
B	.87	.80	.94
C	.78	.73	.83
Janitor	.70	.65	.75
Machinist, Maintenance			
A	1.03	.93	1.13
B	.87	.80	.94
Machinist, Production			
A	1.07	.97	1.17
B	.975	.90	1.05
Machine Tool Misc.			
A	.975	.90	1.05
B	.925	.85	1.00
C	.78	.73	.83
Maintenance Man			
A	.975	.90	1.05
B	.83	.77	.89
Mechanic			
A	1.00	.92	1.08
B	.87	.80	.94
Milling Machine			
A	.975	.90	1.05
B	.87	.80	.94
C	.78	.73	.83
Millwright			
A	$.925	$.85	$1.00
B	.87	.80	.94
Painter, Brush			
A	.925	.85	1.00
B	.80	.75	.85
C	.74	.69	.79
Painter, Spray			
A	.925	.85	1.00
B	.83	.77	.89
C	.78	.73	.83
Polisher and Buffer			
A	.925	.85	1.00
B	.87	.80	.94
C	.78	.73	.83
Screw Machine Auto.			
A	.975	.90	1.05
B	.87	.80	.94
C	.80	.75	.85
Set-Up Man			
A	1.00	.92	1.08
B	.925	.85	1.00
Trucker, Hand	.70	.65	.75
Turret Lathe, Hand			
A	.975	.90	1.05
B	.87	.80	.94
C	.78	.73	.83
Watchman	.70	.65	.75
Welder, Hand			
A	1.00	.92	1.08
B	.925	.85	1.00
C	.80	.75	.85
Welder, Machine			
A	.925	.85	1.00
B	.80	.75	.85
C	.70	.65	.75
Common Labor			
Beginning Rate	.60	...	...
30-Day Rate	.65	...	...
90-Day (Going) Rate	.70	...	...

EVANSVILLE, IND.

LABOR MARKET AREA *

Metal Working †

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.15	$1.05	$1.25
B	1.00	.92	1.08
C	.84	.79	.89
Assembler, Floor			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89
Automatic Lathe			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89

* Includes Evansville and Princeton, Ind.

† For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede those previously published for this industry at 17 War Lab. Rep. W-36—July 25, 1944 (Special Supplement.)

EVANSVILLE, IND.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Drilling Machine Carpenter			
A	$1.07	$0.98	$1.16
B	.98	.91	1.05
Drill Press, Radial			
A	1.07	.98	1.16
B	.98	.91	1.05
C	.84	.79	.89
Drill Press S&M			
A	1.07	.98	1.16
B	.95	.89	1.01
C	.79	.74	.84
Electrician			
A	1.15	1.05	1.25
B	1.00	.92	1.08
Engine Lathe Operator			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89
Grinding Machine Operator			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89
Grinder, Rough			
A	1.07	.98	1.16
B	.95	.89	1.01
C	.84	.79	.89
Heat Treater			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.89	.83	.95
Inspector			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89
Janitor	.75	.70	.80
Machinist, Maintenance			
A	1.24	1.14	1.34
B	1.00	.92	1.08
Machinist, Production			
A	1.29	1.19	1.39
B	1.15	1.05	1.25
Machine Tool, Misc.			
A	1.15	1.05	1.25
B	1.07	.98	1.16
C	.84	.79	.89
Maintenance Man			
A	1.15	1.05	1.25
B	.95	.89	1.01
Mechanic			
A	1.19	1.09	1.29
B	1.00	.92	1.08
Milling Machine			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89
Millwright			
A	1.07	.98	1.16
B	1.00	.92	1.08
Painter, Brush			
A	1.07	.98	1.16
B	.89	.83	.95
C	.79	.74	.84
Painter, Spray			
A	1.07	.98	1.16
B	.95	.89	1.01
C	.84	.79	.89
Polisher and Buffer			
A	$1.07	$0.98	$1.16
B	1.00	.92	1.08
C	.84	.79	.89
Screw Machine, Auto			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.89	.83	.95
Set-Up Man			
A	1.19	1.09	1.29
B	1.07	.98	1.16
Trucker, Hand	.75	.70	.80
Turret Lathe, Hand			
A	1.15	1.05	1.25
B	1.00	.92	1.08
C	.84	.79	.89
Watchman	.75	.70	.80
Welder, Hand			
A	1.19	1.09	1.29
B	1.07	.98	1.16
C	.89	.83	.95
Welder, Machine			
A	1.07	.98	1.16
B	.89	.83	.95
C	.75	.70	.80
Common Labor			
Beginning Rate	.65	....	....
30 Day Rate	.70	....	....
90 Day (Going) Rate	.75	....	....

FORT WAYNE, IND.
LABOR MARKET AREA
Metal Working *

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.11	$1.02	$1.20
B	1.00	.93	1.07
C	.825	.775	.875
Assembler, Floor			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.91	.86	.96
Automatic Lathe			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.91	.86	.96
Carpenter			
A	1.05	.97	1.13
B	.98	.92	1.04
Drill Press, Radial			
A	1.05	.97	1.13
B	.98	.92	1.04
C	.91	.86	.96
Drill Press S&M			
A	1.05	.97	1.13
B	.97	.91	1.03
C	.87	.82	.92

* For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede the rates for this industry previously published at 17 War Lab. Rep. W-48—July 24, 1944 (Special Supplement.)

FORT WAYNE, IND.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Electrician			
A	$1.11	$1.02	$1.20
B	1.00	.93	1.07
Engine Lathe Operator			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.91	.86	.96
Grinding Machine Opr.			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.91	.86	.96
Grinder, Rough			
A	1.05	.97	1.13
B	.97	.91	1.03
C	.91	.86	.96
Heat Treater			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.94	.89	.99
Inspector			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.825	.775	.875
Janitor	.825	.775	.875
Machinist, Maintenance			
A	1.175	1.075	1.275
B	1.00	.93	1.07
Machinist, Production			
A	1.20	1.10	1.30
B	1.11	1.02	1.20
Machine Tool, Misc.			
A	1.11	1.02	1.20
B	1.05	.97	1.13
C	.91	.86	.96
Maintenance Man			
A	1.11	1.02	1.20
B	.97	.91	1.03
Mechanic			
A	1.14	1.05	1.23
B	1.00	.93	1.07
Milling Machine			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.91	.86	.96
Millwright			
A	1.05	.97	1.13
B	1.00	.93	1.07
Painter, Brush			
A	1.05	.97	1.13
B	.94	.89	.99
C	.87	.82	.92
Painter, Spray			
A	1.05	.97	1.13
B	.97	.91	1.03
C	.91	.86	.96
Polisher and Buffer			
A	1.05	.97	1.13
B	1.00	.93	1.07
C	.91	.86	.96
Screw Machine, Auto			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.94	.89	.99
Set-Up Man			
A	1.14	1.05	1.23
B	1.05	.97	1.13
Trucker Hand	$0.825	$0.775	$0.875
Turret Lathe, Hand			
A	1.11	1.02	1.20
B	1.00	.93	1.07
C	.91	.86	.96
Watchman	.825	.775	.875
Welder, Hand			
A	1.14	1.05	1.23
B	1.05	.97	1.13
C	.94	.89	.99
Welder, Machine			
A	1.05	.97	1.13
B	.94	.89	.99
C	.825	.775	.875
Common Labor			
Beginning Rate	.74	.....	.....
30 Day Rate	.79	.....	.....
90 Day (Going) Rate	.84	.....	.....

INDIANAPOLIS, IND.
LABOR MARKET AREA
Metal Working *

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.13	$1.06	$1.20
B	.96	.89	1.03
C	.70	.65	.75
Asembler, Floor			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Automatic Lathe			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Carpenter			
A	1.05	.98	1.12
B	.94	.88	1.00
Drill Press, Radial			
A	1.05	.98	1.12
B	.94	.88	1.00
C	.77	.72	.82
Drill Press, S & M			
A	1.05	.98	1.12
B	.91	.85	.97
C	.73	.68	.78
Electrician			
A	1.13	1.06	1.20
B	.96	.89	1.03
Engine Lathe Operator			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Grinding Machine Opr.			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Grinder, Rough			
A	1.05	.98	1.12
B	.91	.85	.97
C	.77	.72	.82

* For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede those previously published for this industry at 22 War Lab. Rep. W-10—Mar. 7, 1945.

INDIANAPOLIS, IND.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Heat Treater			
A	$1.13	$1.06	$1.20
B	.96	.89	1.03
C	.85	.80	.90
Inspector			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Janitor	.70	.65	.75
Machinist, Maintenance			
A	1.26	1.16	1.36
B	.96	.89	1.03
Machinist, Production			
A	1.26	1.16	1.36
B	1.13	1.06	1.20
Machine Tool, Misc.			
A	1.13	1.06	1.20
B	1.05	.98	1.12
C	.77	.72	.82
Maintenance Man			
A	1.13	1.06	1.20
B	.91	.85	.97
Mechanic			
A	1.18	1.08	1.28
B	.96	.89	1.03
Milling Machine			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Millwright			
A	1.05	.98	1.12
B	.96	.89	1.03
Painter, Brush			
A	1.05	.98	1.12
B	.85	.80	.90
C	.73	.68	.78
Painter, Spray			
A	1.05	.98	1.12
B	.91	.85	.97
C	.77	.72	.82
Polisher & Buffer			
A	1.05	.98	1.12
B	.96	.89	1.03
C	.77	.72	.82
Screw Mach., Auto			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.85	.80	.90
Set-up Man			
A	1.18	1.08	1.28
B	1.05	.98	1.12
Trucker, Hand	.70	.65	.75
Turret Lathe, Hand			
A	1.13	1.06	1.20
B	.96	.89	1.03
C	.77	.72	.82
Watchman	.70	.65	.75
Welder, Hand			
A	1.18	1.08	1.28
B	1.05	.98	1.12
C	.85	.80	.90
Welder, Machine			
A	1.05	.98	1.12
B	.85	.80	.90
C	.70	.65	.75
Common Labor			
Beginning Rate	.60		
30 Day Rate	.65		
90 Day (Going) Rate	.70		

LA PORTE-MICHIGAN CITY, IND., LABOR MARKET AREA

Metal Working *

Job Classification	Rate per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.00	$ .90	$1.10
B	.87	.80	.94
C	.74	.69	.79
Assembler, Floor			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Automatic Lathe			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Carpenter			
A	.92	.82	1.02
B	.85	.78	.92
Drill Press, Radial			
A	.92	.82	1.02
B	.85	.78	.92
C	.74	.69	.79
Drill Press, S&M			
A	.92	.82	1.02
B	.83	.77	.89
C	.74	.69	.79
Electrician			
A	1.00	.90	1.10
B	.87	.80	.94
Engine Lathe Operator			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Grinding Machine Operator			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Grinder, Rough			
A	92	.82	1.02
B	.83	.77	.89
C	74	.69	.79
Heat Treater			
A	1.00	.90	1.10
B	.87	.80	.94
C	.80	.75	.85
Inspector			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Janitor	.68	.63	.73
Machinist, Maintenance			
A	1.07	.97	1.17
B	.87	.80	.94
Machinist, Production			
A	1.11	1.01	1.21
B	1.00	.90	1.10
Machine Tool, Misc.			
A	1.00	.90	1.10
B	.92	.82	1.02
C	.74	.69	.79
Maintenance Man			
A	1.00	.90	1.10
B	.83	.77	.89

* For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede the rates previously published for this industry at 17 War Lab. Rep. W-45—July 25, 1944 (Special Supplement.)

LA PORTE, IND.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Mechanic			
A	$1.03	$.93	$1.13
B	.87	.80	.94
Milling Machine			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Millwright			
A	.92	.82	1.02
B	.87	.80	.94
Painter, Brush			
A	.92	.82	1.02
B	.80	.75	.85
C	.74	.69	.79
Painter, Spray			
A	.92	.82	1.02
B	.83	.77	.89
C	.74	.69	.79
Polisher and Buffer			
A	.92	.82	1.02
B	.87	.80	.94
C	.74	.69	.79
Screw Machine, Auto			
A	1.00	.90	1.10
B	.87	.80	.94
C	.80	.75	.85
Set-Up Man			
A	1.03	.93	1.13
B	.92	.82	1.02
Trucker, Hand	.68	.63	.73
Turret Lathe, Hand			
A	1.00	.90	1.10
B	.87	.80	.94
C	.74	.69	.79
Watchman	.68	.63	.73
Welder, Hand			
A	1.03	.93	1.13
B	.92	.82	1.02
C	.80	.75	.85
Welder, Machine			
A	.92	.82	1.02
B	.80	.75	.85
C	.68	.63	.73
Common Labor			
Beginning Rate	.58	....	....
30 Day Rate	.63	....	....
90 Day (Going) Rate	.68	....	....

MINNEAPOLIS-ST. PAUL, MINN., LABOR MARKET AREA *

Metal Working †

Job Classification	Rate per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.07	$ .99	$1.15
B	.91	.84	1.00
C	.78	.73	.83
Assembler, Floor			
A	$1.07	$.99	$1.15
B	.91	.84	1.00
C	.78	.73	.83
Automatic Lathe			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.78	.73	.83
Carpenter			
A	.985	.91	1.06
B	.885	.82	.95
Drill Press, Radial			
A	.985	.91	1.06
B	.885	.82	.95
C	.78	.73	.83
Drill Press, S&M			
A	.985	.91	1.06
B	.86	.80	.92
C	.73	.68	.78
Electrician			
A	1.16	1.06	1.26
B	.91	.84	1.00
Engine Lathe			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.78	.73	.83
Grinding Machine			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.78	.73	.83
Grinder, Rough			
A	.985	.91	1.06
B	.86	.80	.92
C	.78	.73	.83
Guard	.775	.70	.85
Heat Treater			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.81	.76	.86
Inspector			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.78	.73	.83
Janitor	.70	.65	.75
Machinist, Maintenance			
A	1.16	1.06	1.26
B	.91	.84	1.00
Machinist, Production			
A	1.16	1.06	1.26
B	1.07	.99	1.15
Machine Tool Misc.			
A	1.07	.99	1.15
B	.985	.91	1.06
C	.78	.73	.83
Maintenance Man			
A	1.07	.99	1.15
B	.86	.80	.92
Mechanic			
A	1.10	1.01	1.21
B	.91	.84	1.00
Milling Machine			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.78	.73	.83
Millwright			
A	.985	.91	1.06
B	.91	.84	1.00
Painter, Brush			
A	.985	.91	1.06
B	.81	.76	.86
C	.73	.68	.78

* Includes Anoka, Dakota, Hennepin, Ramsey, Washington, and Scott Counties, Minnesota.

† For industry description see footnote (†) under Chicago Area, p. W-4. The rates below supersede the rates for this industry previously published at 17 War Lab. Rep. W-55—July 25, 1944 (Special Supplement.)

MINNEAPOLIS-ST. PAUL—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Painter, Spray			
A	$.985	$.91	$1.06
B	.86	.80	.92
C	.78	.73	.83
Polisher and Buffer			
A	.985	.91	1.06
B	.91	.84	1.00
C	.78	.73	.83
Screw Mach. Auto			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.81	.76	.86
Set-Up Man			
A	1.10	1.01	1.21
B	.985	.91	1.06
Truck Driver	.85	.78	.92
Trucker, Hand	.70	.65	.75
Trucker, Power	.80	.75	.85
Turret Lathe, Hand			
A	1.07	.99	1.15
B	.91	.84	1.00
C	.78	.73	.83
Watchman	.70	.65	.75
Welder, Hand			
A	1.10	1.01	1.21
B	.985	.91	1.06
C	.81	.76	.86
Welder, Machine			
A	.985	.91	1.06
B	.81	.75	.86
C	.70	.65	.75
Common Labor			
Beginning Rate	.60	....	....
30-Day Rate	.65	....	....
90 Day (Going) Rate	.70	....	....

RACINE-KENOSHA, WIS., LABOR MARKET AREA

Metal Working *

Job Classification	Rate Per Hour	Range Min.	Range Max.
Assembler, Bench			
A	$1.12	$1.05	$1.19
B	1.00	.94	1.06
C	.87	.82	.92
Assembler, Floor			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.82	.92
Automatic Lathe			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.82	.92
Carpenter			
A	1.06	.99	1.13
B	.98	.92	1.04
Drill Press, Radial			
A	1.06	.99	1.13
B	.98	.92	1.04
C	.87	.82	.92
Drill Press S & M			
A	$1.06	$.99	$1.13
B	.95	.89	1.01
C	.83	.78	.88
Electrician			
A	1.12	1.05	1.19
B	1.00	.94	1.06
Engine Lathe			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.84	.92
Grinding Machine			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.82	.92
Grinder, Rough			
A	1.06	.99	1.13
B	.95	.89	1.01
C	.87	.82	.92
Heat Treater			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.91	.86	.96
Inspector			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.82	.92
Janitor	.80	.75	.85
Machinist, Maintenance			
A	1.20	1.10	1.30
B	1.00	.94	1.06
Machinist, Production			
A	1.23	1.13	1.33
B	1.12	1.05	1.19
Machine Tool Misc.			
A	1.12	1.05	1.19
B	1.06	.99	1.13
C	.87	.82	.92
Maintenance Man			
A	1.12	1.05	1.19
B	.95	.89	1.01
Mechanic			
A	1.16	1.08	1.24
B	1.00	.94	1.06
Milling Machine			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.82	.92
Millwright			
A	1.06	.99	1.13
B	1.00	.94	1.06
Painter, Brush			
A	1.06	.99	1.13
B	.91	.86	.96
C	.83	.78	.88
Painter, Spray			
A	1.06	.99	1.13
B	.95	.89	1.01
C	.87	.82	.92
Polisher and Buffer			
A	1.06	.99	1.13
B	1.00	.94	1.06
C	.87	.82	.92
Screw Mach. Auto			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.91	.86	.96
Set-Up Man			
A	1.16	1.08	1.24
B	1.06	.99	1.13

* For industry description see footnote (†) under Chicago Area, p. W-4.

RACINE-KENOSHA, WIS.—Contd.

Job Classification	Rate Per Hour	Range Min.	Range Max.
Trucker, Hand	$.80	$.75	$.85
Turret Lathe, Hand			
A	1.12	1.05	1.19
B	1.00	.94	1.06
C	.87	.82	.92
Watchman	.80	.75	.85
Welder, Hand			
A	1.16	1.08	1.24
B	1.06	.99	1.13
C	.91	.86	.96
Welder, Machine			
A	1.06	.99	1.13
B	.91	.86	.96
C	.80	.75	.85
Common Labor			
Beginning Rate	.70	..	..
30-Day Rate	.75	..	..
90-Day (Going) Rate	.80	..	..

Going Wage Rates of Region VII (Kansas City)

The going wage rates appearing below for this region are new, supplementary determinations issued by the Kansas City Regional Board since publication of previous compilations of rates at 14 War Lab. Rep. W-67—Feb. 16, 1944 (MANUAL OF GOING WAGE RATES, p. 205); *16 War Lab. Rep. W-26—June 7, 1944; 16 War Lab. Rep. W-1—June 24, 1944; 16 War Lab. Rep. W-8—July 5, 1944; 17 War Lab. Rep. W-15—Aug. 2, 1944; 19 War Lab. Rep. W-5—Nov. 3, 1944; 21 War Lab Rep. W-4—Jan. 17, 1945; 24 War Lab. Rep. W-7—May 16, 1945; 24 War Lab. Rep. W-18—June 13, 1945.*

KANSAS CITY., MO., LABOR MARKET AREA

Elevators, Terminal *

Job Description	Rate Per Hour
Belt Man	$ .85
Car Puller	.85
Cleaner Man	.875
Dump Operator	.875
Dump Laborer	.85
Electrician	.975
Engineer, Locomotive	.975
Fireman	.85
Foreman or Shed Boss	.975
Load Out Man	$.85
Machinist	.975
Millwright	.975
Millwright, Assistant	.875
Mixer, Grain	.975
Mixer, Assistant	.875
Oiler	.85
Packer in Dust House	.85
Sampler	.875
Shoveler	.85
Spouter, Head	.875
Spouter	.875
Sweeper	.75
Switchman, Truck	.875
Watchman, Regular	.55
Watchman, Extra or Relief	.70
Weighmaster	.975
Weigher, Assistant	.875

* ED. NOTE: The rates below supersede the rates for this industry previously published at 14 War Lab. Rep. W-79—Feb. 16, 1944 (MANUAL OF GOING WAGE RATES, p. 217).

Going Wage Rates of Region X (San Francisco)

The going wage rates appearing below for this region are new, supplementary determinations issued by the San Francisco Regional Board since publication of previous compilations of rates at 15 War Lab. Rep. W-71—Apr. 12, 1944 (MANUAL OF GOING WAGE RATES, p. 479); *16 War Lab. Rep. XXI—May 31, 1944; 16 War Lab. Rep. W-41—June 7, 1944; 16 War Lab. Rep. W-16—June 21, 1944; 16 War Lab. Rep. W-5—June 28, 1944; 16 War Lab. Rep. W-22—July 12, 1944; 17 War Lab. Rep. W-21—Aug. 3 1944; 17 War Lab. Rep. W-16—Aug. 9, 1944; 17 War Lab. Rep. W-9—Aug. 23, 1944; 17 War Lab. Rep. W-22—Aug. 30, 1944; 18 War Lab. Rep. W-7—Sept. 18, 1944; 18 War Lab. Rep. W-20—Oct. 4, 1944; 18 War Lab. Rep. W-7—Oct. 11, 1944; 19 War Lab. Rep. W-17—Nov. 8, 1944; 20 War Lab. Rep. W-19—Dec. 27, 1944; 22 War Lab. Rep. W-10—Mar. 7, 1945; 24 War Lab. Rep. W-12—May 16, 1945; 24 War Lab. Rep. W-10—May 23, 1945; 24 War Lab. Rep. W-25—June 13, 1945; 25 War Lab. Rep. W-12—June 27, 1945; 25 War Lab. Rep. W-5—July 11, 1945.*

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STATE OF CALIFORNIA

LABOR MARKET AREA

Beet Sugar Manufacture

Job Classification	Rate Per Hour
Base Rate Labor	$ .85

LOS ANGELES COUNTY

LABOR MARKET AREA

Retail Jewelry Stores [1]

Job Classification	Rate Per Hour
Watchmakers	$1.67
Senior Salesmen	1.47
Jewelry Repairmen	1.33
Junior Salesmen	.83

1 The rates now cover all establishments whether or not employing eight or more persons.

SAN DIEGO COUNTY

LABOR MARKET AREA

Cleaning and Dyeing Industry [2]

Job Classification	Rate Per Hour
Dry Cleaner	$1.00
Steam Cleaner	1.00
Fancy Spotter	1.14
Wool Spotter (Dark Spotter)	1.00
Gray Spotter	.89
Machine Presser, Wool	1.00
Machine Presser, All-around	1.00
Fancy Presser	.75
Hand Presser (Silk Finisher)	.75
Counter Clerk	.60
Marker-Assembler	.60
Seamstress	.65

SAN FRANCISCO BAY

LABOR MARKET AREA [3]

Hardware Stores, Retail [4]

Job Classification	Rate Range Min.	Max.
Retail Hardware Clerk [5]	$ .91	$1.05
Retail Houseware Clerk	.65	.77

2 ED. NOTE: The rates below supersede those previously published for this industry at 15 War Lab. Rep. W-86—Apr. 12, 1944 (MANUAL OF GOING WAGE RATES, p. 494.)

3 Rates cover San Francisco and Alameda Counties.

4 Stores selling at retail and combination of the basic lines of hardware such as tools, builders' hardware, paint and glass, hoseware, household appliances, and cutlery. Does not include stores selling paint only, or paint, glass or wallpaper only.

5 Including all-around hardware, heavy hardware, builders' hardware, lighting and electrical equipment, paint and tools.

Decisions

of the

National War Labor Board

Regional Boards, Commissions, and Courts

FIRESTONE RUBBER & METAL PRODUCTS CO.—

Decision of National Board

In re FIRESTONE RUBBER AND METAL PRODUCTS COMPANY [Wyandotte, Mich.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 174 (CIO). Case No. 111-8714-D, June 16, 1945 (made public Aug. 1, 1945).

HOURS OF WORK—Call-in pay—Employees prevented from working by work stoppage.

Employee requested to work but sent home because of lack of work should receive minimum pay of three hours at his regular hourly rate even though employee is prevented from working by existence of work stoppage in which he is not participating.

For other rulings see Index-Digest 65.180 in this or other volumes.

SENIORITY — Supervisory employees —Retention of seniority for duration of war

Employees promoted to supervisory positions not covered by contract are entitled to retain their seniority rights for duration of war.

For other rulings see Index-Digest 155.580 in this or other volumes.

WORKING CONDITIONS—Computation of own pay—Discontinuance

Company should discontinue present practice of requiring employees to compute their own daily earnings except that workers should maintain production record on form supplied by company where union contends that (1) practice leads to confusion and disputes, (2) calculation of pay is function of management, and (3) present time allowance of five minutes is inadequate to cover time required for complicated calculations.

For other rulings see Index-Digest 330.920 in this or other volumes.

Majority decision of Board affirming directive order of Regional Board XI (Detroit). Public members concurring: Nathan P. Feinsinger and Edwin E. Witte. Labor members concurring: Carl J. Shipley and James A. Brownlow. Employer members dissenting: Earl N. Cannon and Horace B. Horton.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the directive order dated Jan. 17, 1945, of the National War Labor Board for the Eleventh Region, hereby decides the dispute between the parties and orders:

I. The said petition for review is hereby denied, and the said directive order of Jan. 17, 1945, is hereby affirmed and adopted as the order of the National War Labor Board.

II. The terms and conditions of employment set forth in said directive

order of Jan. 17, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board XI (Detroit)

Jan. 17, 1945

I. The Regional War Labor Board for the Eleventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Termination Clause of General Order 9240

The following shall be incorporated as Sec. 3, Subsection II, Art. 5, of the agreement between the parties:

"It is understood and agreed that, upon the revocation by the President or otherwise of Executive Order No. 9240 [8 War Lab. Rep. XVII; WCDS 20], this modification of the contract shall automatically become void, and the provisions of the contract with respect to overtime pay shall automatically become of full force and effect."

2. Seniority for Employees Not Covered by Agreement

The following section shall be incorporated in the agreement:

"Sec. 12, Art. 4: Seniority employees promoted to positions not covered by this agreement shall be permitted to retain their seniority rights for the duration of the war."

3. Call-in Pay During a Labor Stoppage

The following section shall be incorporated in the agreement:

"Sec. 4, Art. 5: Employees requested to report for work and who are sent home shall receive a minimum of three hours' pay at their regular hourly rate for that day. The Company reserves the right to avail themselves of the service of the employee for those three hours. The only exception is in case of a major breakdown when the Company shall endeavor to notify all employees possible. It is distinctly understood that the employees shall receive this pay when work is available only if they accept the available work and that, when the employees do not accept the available work, they not be entitled to the call-in pay."

4. Requirement of Employees to Calculate Earnings on Time Cards

The present practice of workers making out and computing daily earnings shall be discontinued, excepting that the worker shall be required to record on some form, furnished by the company, only the number of pieces produced in that day.

The company and the union shall work out a suitable plan to eliminate this practice by the company within 30 days from the date of this directive order.

5. Wage Classifications

(a) The union's request for increases in wages in the following classifications is denied: Labor, gardener, coal handler, hooker, crane operator, pickling and plating operator, and salvage repair, jettison tank division.

(b) The union's request for increases in wages to pipefitter, electrician, and utility mechanic is denied without prejudice to reopening the question if there is a change in the wage stabilization policy of the National War Labor Board or of this Regional Board as to maintenance rates.

(c) The union's request to change outside truck drivers from salary to an hourly rate is denied.

(d) The rate of experimental men shall be $1.30 to $1.50 per hour, with an immediate increase to $1.40 per hour.

(e) The present rate of $1.03 per hour for tool crib attendant shall be maintained. However, the company and the union shall, within 30 days from the date of this directive order, negotiate and agree upon the description of the duties of the head crib attendant, whose rate shall be $1.08 per hour.

(f) The following rates shall be established:

Classification	Hrly. Base Rate Plus Bonus
Inside Truck Driver	$.92
Production Line No. 7	.92
Production Line Welder	.92
Production Line No. 15	.80

Classification	Hrly. Base Rate Plus Bonus
Production Line No. 15 (Operator)	.85
Production Line No. 15 (Serviceman)	.92

Any dispute arising as to questions at issue regarding quantity and quality of comparability shall be subject to final determination in accordance with the grievance procedure incorporated in the contract between the parties. If the parties are unable to settle the grievance relating to this issue, they shall be submitted to final arbitration. The parties shall have five days from the completion of the final step of the grievance procedure in which to select a mutually satisfactory arbitrator. If, at the end of that period, they are unable to agree upon an arbitrator, at the request of either party the Regional War Labor Board will appoint the arbitrator.

The parties shall bear their own costs and shall share equally the expenses arising out of the arbitration proceedings.

6. Retroactive Date

Increases resulting from Pars. 5(d) and 5(f) shall be made effective as of June 16, 1944.

Any employee whose service with the company has terminated since June 16, 1944, shall be entitled to retroactive pay in accordance with the resolution of the National War Labor Board of Apr. 2, 1943.*

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

Signed by Louis C. Miriani and Herman J. Wyngarden, public members; John L. Lovett and Stephen F. Dunn, employer members, subject to dissent on issues 3 and 5(f); and Morris Field and Archie Virtue, labor members, subject to dissent on Issues 2, 5(a), 5(b), 5(e), and 6.

Report and Recommendations of the Panel

Jan. 17, 1945

HISTORY OF THE DISPUTE

This case involves the Wyandotte, Mich. plant of the Firestone Rubber & Metal Products Company producing rims for trucks, tractors, and trailers; Bogie rollers for tanks; spark plugs; jettison tanks; and miscellaneous stampings and metal products. Practically all of the production of this plant is devoted to the war effort, and about 1,150 hourly rated employees are employed.

On February 10, 1944, the Regional War Labor Board issued a directive order in Case No. 111-1910-D [14 War Lab. Rep. 621], involving the company and the union. Four negotiation meetings were held by the parties on the issues involved herein, and finally a meeting was held before a conciliator on May 15, 1944. After two days' negotiation, a partial agreement was reached with five issues remaining for certification to the War Labor Board. On May 23, 1944, the parties signed a stipulation naming the five disputed

* Ed. Note: The text of the resolution is as follows:

"Any employee who has either quit or been discharged since the retroactive date established by this order shall receive the amount of the increase for classification up to the date on which his employment with the company terminated. The company and union shall promptly send a joint letter to each such employee at his last known address advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment if good cause is shown for the application being delayed beyond the 60 days. Failure to make payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States either before or within 60 days after the date of joint letter."

issues. The case was certified on June 16, 1944.

ISSUES

[The issues in dispute are:]

1. Termination clause of General Order 9240,
2. Seniority for employees not covered by agreement,
3. Call-in pay during a labor stoppage,
4. Requirement of employees to calculate earnings on time cards, and
5. Certain wage classifications.

1. Termination Clause of General Order 9240

Company's Position

The company takes the position that, if General Order 9240 becomes inoperative before expiration of the new contract, then the subject of premium pay should be negotiated between the parties at that time.

Union's Position

The union takes the position that, since Executive Order 9240 is a mandate whereby the agreement between the parties relating to overtime is rendered inoperative for the period of time Executive Order 9240 is in effect, the agreement should include an understanding that the parties return to the agreed upon provision on overtime upon the expiration of Executive Order 9240.

Findings of Fact and Discussion

The company and the union are still operating under a contract dated April 1942, there being no 1943 contract negotiated. Before the issuance of Executive Order 9240, certain overtime provisions were in effect which became automatically inoperative under the terms of the Executive Order. Since the Executive Order 9240 rendered inoperative overtime provisions in the contract only for a period of national emergency, it is the opinion of the panel that, if and when such emergency is no longer existent and the Executive Order expires, the parties should return to the provisions on overtime existing before the order was issued.

Recommendation

The panel recommends that the following be incorporated as Sec. 3, Subsec. II, Art. 5, of the agreement between the parties:

"It is understood and agreed that, upon the revocation by the President or otherwise of Executive Order No. 9240, this modification of the contract shall automatically become void, and the provisions of the contract with respect to overtime pay shall automatically become of full force and effect."

2. Seniority for Employees not Covered by Agreement

Company's Position

It is the position of the company that seniority means length of time with the company, regardless of whether or not an individual is a union member in good standing and regardless of whether he is on clock or on salary and that, therefore, seniority should accumulate equally for those employees not covered by the agreement as for those who are covered by it.

Union's Position

The union contends that it would be unfair to production employees to allow a man who has enjoyed the increased salary and better working conditions of a foreman to accumulate seniority as a foreman, thus enabling him to oust a production worker in the event of a layoff or reduction in the working forces.

Findings of Fact and Discussion

The contract now in force contains no mention of right to accumulate seniority by foremen and those not covered by the agreement. In the case of the Eagle Ottawa Leather Company, No. 111-4415-D, the Labor Board for Region XI interpreted the contract in that case by granting foremen accumulative seniority. Other cases decided by other Regional Labor Boards (Allis-Chalmers, 7 War Lab. Rep. 297; John Morrell Company, 12 War Lab. Rep. 389; and Sealed Power Corporation, 111-2247-D [13 War Lab. Rep., 159] tended to permit the accumulation of seniority while serving in a supervisory capacity and its retention when reduced to a worker, subject to time limitation during which they may be permitted to maintain their seniority while serving in a supervisory capacity. The panel is of the opinion that employees not covered by the contract should be permitted to retain their seniority right for the duration of the war and for a reasonable time thereafter.

Recommendation

The panel recommends that the following section be incorporated in the agreement (Sec. 12, Art. 4):

"Seniority employees promoted to positions not covered by this agreement shall be permitted to retain their seniority rights for the duration of the war and for three months thereafter. If at the end of this time they are retained in a supervisory capacity which excludes them from the bargaining unit, they shall lose their seniority privileges."

3. Call-In Pay During Labor Stoppage

Company's Position

The company has no objections to a retention of the present provision [in the] contract and is willing to increase the call-in period from two to three hours, but requests an interpretation that call-in pay is not due an employee who is prevented from working by a labor stoppage.

Union's Position

The union contends that, if any worker reports and is willing to work even though other employees are engaged in authorized work stoppage, the worker should be paid the call-in pay or allowed to work.

Findings of Fact and Discussion

The provision existing in the present contract regarding the call-in pay is as follows:

"Employees who are requested to report for work and who are sent home shall receive a minimum of two hours' pay at their regular hourly rate for that day. The Company reserves the right to avail themselves of the services of the employees for those two hours. The only exception is in the case of a major breakdown when the Company shall endeavor to notify all employees possible."

Owing to the location of the plant in Riverview, a considerable distance from the homes of most of the employees, both sides agree that the ordinary two-hour provision should be extended to three hours. The difficulty arises in interpreting the provision, namely, whether the employee should be entitled to the benefits of the provision when he is prevented from working by a labor stoppage in which he does not participate. There have been a number of work stoppages in this plant, and the company has refused to allow call-in pay which, the union maintains, is contrary to the terms of the agreement.

Recommendation

The panel recommends that the following be incorporated in the contract as Sec. 4, Art. 5:

"Employees requested to report for work and who are sent home shall receive a minimum of three hours' pay at their regular hourly rate for that day. The Company reserves the right to avail themselves of the service of the employee for those three hours. The only exception is in case of a major breakdown when the Company shall endeavor to notify all employees possible. It is distinctly understood that the employees shall receive this pay when work is available only if they accept said work and that when the employees do not accept the available work that they be not entitled to the call-in pay."

4. Requirement of Employees to Calculate Earnings on Time Cards

Company's Position

The company maintains that it should be permitted to continue the past practice requiring that the employees should place on each time card the operation on which he works, the number of pieces produced, incentive rate, and his daily earnings.

Union's Position

The union contends that calculating of pay is a function of management and its time office and not of the employees. The union does not object to the worker marking the number of pieces completed each day but objects to the complicated calculation of earnings. The union contends that, when an employee is required to calculate his earnings each day, it is the cause of much confusion and unnecessary disputes, and it is done on the employee's time for which he receives no extra compensation. It is therefore, requested that the practice be discontinued.

Findings of Fact and Discussion

Under the present practice, the employees have to wait, after completing a day's work, until a master card is posted, after which they are requested, from the master card, to make out their calculation referred to above. They are now allowed five minutes to make out this card, but frequently it takes more time than that. The issue does not involve language contained in the contract, and it is really a dispute arising out of a practice.

Recommendation

The panel recommends that the present practice of workers making out and computing daily earnings be discontinued, excepting that the worker should be required to record on some form, furnished by the com-

pany, only the number of pieces produced in that day. The panel further recommends that the company and the union be instructed to accordingly work out a suitable plan to eliminate this practice by the company within 30 days from the date of the directive order.

5. Certain Wage Classifications

The union has requested increases in the present rate on certain wage classifications. These requests may be subdivided as to those alleged as interplant inequalities and those based on intra-plant inequalities. Included in those based on intra-plant inequalities are:

(a) Labor

The number of employees involved in this classification is five. The present rate is 90 cents per hour, and the union proposes a rate of 95 cents per hour. In view of the fact that the present rate is within the stabilized wage rate for the area for similar job standards, the panel recommends that the union's request for increase be denied.

(b) Gardener

One employee involved. The present rate is 90 cents per hour. The union requests an increase to 95 cents per hour.

From the job standards submitted by the company and the union, the panel has concluded that this classification is equal to that of labor and that, therefore, the stabilized rate for labor should be applied here. The present rate being within the present stabilized wage rate, the panel recommends that the union's request for increase be denied.

(c) Coal Handler

One employee involved. The present rate is 90 cents per hour. The union requests an increase to 95 cents per hour.

From the job standards submitted by the company and the union, the panel is of the opinion that this job should come under the job classification of labor and that the labor stabilized rates should apply. The panel, therefore, recommends that the union's request for increase be denied.

(d) Pipefitter

Five employees involved. The present rate is $1.25 per hour; the union proposes an increase to $1.30 per hour.

In view of the fact that the present rate comes within the stabilized wage rates for the area in that bracket, the panel recommends that the union's request for increase be denied.

(e) Electrician

(15 employees involved). The present rate is $1.31 per hour, and the union proposes an increase to $1.35 per hour.

The panel finds that the present rates are within the stabilized wage rates for that bracket in the area and, therefore, recommends that the union's request for increase be denied.

(f) Utility Mechanic

(Six employees involved). The present rate is $1.20 per hour. The union proposes an increase to $1.25 per hour.

From the job standards submitted by the company and the union, the panel determined that this classification is comparable to a carpenter. The present rate being within stabilized wage rates in the area for carpenters, the panel recommends that the union's request for increase be denied.

(g) Hooker

The present rate is $1.03 per hour. The union proposes an increase to $1.06 per hour.

According to the testimony submitted, the duties of a hooker are to attach the chains to the crane around the load that is being lifted. It is a ten-ton crane, and the lifts are of approximately five tons. The hooker's duty is also to signal the crane operator to lift, move, and lower the crane. In view of the fact that the duties of a hooker are similar to those of a crane operator, the panel recommends that the rate be increased to $1.05 per hour, that being the stabilized wage rate for crane operators in the area.

(h) Outside Truck Drivers

These men are now on salary, and the union proposes an hourly rate of $1.10.

In view of the fact that these are salaried employees outside of the bargaining unit and [that] no information was furnished to justify a change, the panel is of the opinion that it has no jurisdiction to change their status from salary to hourly rates.

(i) Crane Operators

The present rate is $1.09. The union proposes an increase to $1.12 per hour.

The present rate being above the stabilized wage rates in the area for this job classification, the panel recommends that the union's request for an increase be denied.

(j) Hydraulic Mechanic

By stipulation of the parties, this item has been withdrawn and was not considered by the panel.

(k) Inside Truck Drivers

The present rate is 82 cents per hour to $1.03 per hour. The union proposes an increase to $1.05 per hour.

The present rate being within the stabilized wage rates in the area for this job classification, the panel recommends that the union's request for an increase be denied.

The following wage increases are requested by the union based on alleged intra-plant inequalities:

(l) Experimental Men

(Three employees involved). The present rate is $1.12 to $1.31 per hour. The union proposes an increased scale of $1.40 to $1.60 per hour. The company offers a scale of $1.30 to $1.50 per hour.

There is no separate experimental department in this plant. The union contends that the work of these people is comparable to that of tool and die makers whose range is $1.40 to $1.60 per hour, while the company maintains that the machinists' rate of $1.30 to $1.50 is properly applicable.

From the job descriptions offered by the union and the company and from the personal observation made by the panel at the plant, it was determined that the type of work done by these people is that of all around mechanics. When trouble is encountered in any particular spot on the line, they are called upon to do the work, such as putting in a chute, conveyor, or other similar work to keep the line going. These people are not actually toolmakers but do important all around work requiring special machinist's skill and experience. In view of rates payable to machinists and to tool makers, the panel recommends an increase in the present rates to $1.40 per hour. The panel does not believe that a scale is necessary or advisable in this instance.

(m) Tool Crib Attendants

The tool crib attendants at present are receiving $1.03 per hour, excepting when there is more than one man in the crib; the so-called head man then received $1.08 per hour. The union proposes a wage scale of $1.03 to $1.08 per hour.

The dispute in this case arises out of the practice of the company to pay the head man in the crib $1.08 per hour while the others receive $1.03 per hour. The union feels that there should be a range of $1.03 to $1.08 per hour. The difference in the duties of the so-called head crib attendant is that he maintains inventory records and works with the purchase department on material that has to be ordered to keep the minimum bank of supply in the store room.

In view of the fact that the so-called head crib attendant's duties are different from that of the crib attendant, the panel recommends that the present rate of $1.03 per hour for tool crib attendants be maintained and that a separate classification be set up by the company and the union, within 30 days of the directive order, describing the duties and rate of the head crib attendant, at the rate of $1.08 per hour.

(n) Pickling and Plating Operator

(Six men involved). The present rate is $1.12 per hour. The union proposes an increase to $1.15 per hour.

From the job descriptions furnished by the company and the union on this classification and from a personal inspection of the type of work done by them, the panel recommends that the union's request be denied as the present rate is within the stabilized wage rate range for similar work in the area.

(o) Production Line No. 7

The present rate is 82 cents per hour base rate plus bonus. The union proposes a wage rate of $1.03 per hour base rate plus bonus.

A personal investigation by the panel of the actual situation at the plant reveals that this item and the question of the production rate on Line No. 15 has been the source of most differences between the parties. The original line No. 7 was referred to as the "Youth Line" and consisted mainly of employees of a lower age. On the Board's recommendation, this name was discontinued, and it was referred to thereafter as a production line. The base rate on this line is 82 cents per hour while other lines have a base rate of $1.03 per hour. The work done here is miscellaneous stampings on punch presses. The union maintains that the same degree of skill and ingenuity is required on this line as on other lines, whereas the company maintains that the difference of the rates is based upon the fact that this is lighter work involving ordinary light punch presses. About 75 per cent of the people employed on this line are female employees.

An inspection of this line reveals that there is not a great difference in the skill required on this line from that required on other lines paying $1.03 per hour base rate. There are, however, some differences in the type of work, it being lighter work than that on the rim lines and other lines. This difference, however, hardly warrants the great difference in the rates. The public panel member, both other members dissenting, recommends that the present rate be increased from 82 cents per hour base rate plus bonus to 92 cents per hour base rate plus bonus.

(p) Production Line Welders

The present rate is 82 cents per hour base rate plus bonus. The union proposes $1.06 base rate plus bonus.

The issue here arises out of the same conditions which were discussed in the preceding item. Whereas the welders on lines other than Line No. 7 are receiving $1.06 per hour, the welders on Line No. 7 are receiving 82 cents per hour. The union maintains that the welders should receive the same rate payable to [other] welders throughout the rest of the shop.

The company claims that the welders who are paid the $1.06 rate are higher type welders because they weld products going out on a combat vehicle of heavier material requiring an exceptionally good job whereas, on Line No. 7, the work is on a thinner material not requiring the skill that is necessary in the other lines.

An inspection of this work convinces the public panel member that the difference now existing between the rate payable to the welders on other lines is too great, and he therefore recommends, both labor and industry members dissenting, that the rate be increased from 82 cents per hour plus bonus to 92 cents per hour plus bonus.

(r) Production Line No. 15

The present rate is 70 cents per hour base rate plus bonus The union proposes a 90-cent base rate plus bonus.

This line is what is generally known as the spark plug line. For the most part it consists of female employees. The union suggests a 90-cent rate be applied to bring the earnings in line with those in the jettison tank division.

Inspection was made by the panel of the type of work done on this line. Based on a comparison of the type of work on this line and the skill and effort required with that done on other lines, the public panel member, both labor and industry members dissenting, recommends that the hourly base rate be increased from 70 cents per hour to 80 cents per hour plus bonus.

(s) Production Line No. 15 Operators

The present rate is 75 cents base rate plus bonus. The union proposes an increase to 95 cents per hour base rate plus bonus.

(t) Production Line No. 15 Service Men

The present rate is 82 cents to $1.03 per hour; the union proposes an increase to $1.03 per hour. Both these items, s and t, can be jointly treated as determination on these issues is based upon the determination of the issue on Production Line No. 15. The dispute arises out of a claim of intra-plant inequalities because of the alleged lower rate paid on that line than on the other lines in the plant. Both the union and the company agree that the differential now existing between the rates of production line workers, the press operators, and the service men should continue. In view of the fact that it has already been recommended above that the Production Line No. 15 be given an increase from 70 cents per hour rate to 80 cents base rate plus bonus, the public member recommends that the Production Line No 15 press operators' rate be increased from 75 cents base rate plus bonus to 85 cents base rate plus bonus and that the Production Line No. 15 service men's rate be increased from 82 cents per hour to 92 cents per hour. (Labor and industry members dissenting)

(u) Salvage Repair, Jettison Tank Division

The present rate is $1.06 for the solderer and $1.03 for the assistant. The union proposes $1.16 per hour.

The work for the men in this classification consists of salvage repair work through soldering. Much of the work consists of silver or soft soldering, welding of concave places, filing them off, patching a seam, and occasionally plugging up holes. The difficulty on this issue arises out of the fact that the rates in the jettison tank division are out of line with other divisions in that they are much higher. The rates now in effect were negotiated rates, and the work done in this division is temporary and is not contemplated to be continued

after the war emergency. The rate for the silver and soft soldering at present is $1.06, and the panel is of the opinion that an increase as requested by the union would put the rate out of line with that of other solderers in the plant. The panel, therefore, recommends that the union's request be denied. (Labor dissenting)

6. Retroactive Date

The only question remaining is the retroactive date of the changes in rates recommended herein.

Signed by Thaddeus Machrowicz, representing the public; R. Dugger, representing employers, subject to dissent on Issues 1, 2, 3, and 5; and Robert L. Kantor, representing labor, subject to dissent on Issues 5 and 6.

Dissenting Opinion of the Labor Representative

The labor member concurs in the recommendations of the panel on issues 1, 2, 3, and 4 but dissents on 5 and 6.

WAGES

Issue 5 deals with wage rates, and following are the classifications in dispute and the proposals of the labor member:

(a) Laborer

The men in this classification in this plant perform work of a different nature than is usually performed by laborers in other plants. They perform a varied number of jobs as is indicated by the description of the classification submitted by both the company and the union. Furthermore, the descriptions of the classification indicate that they perform some jobs which are particularly nasty. The labor member of the panel believes that it is the RWLB policy to consider both variety and onerousness in the determination of a rate for such a classification as this. The labor member further believes that the classification of laborer in this plant, because of the variety of work that it entails, requires workers with abilities higher than those usually required for common laborers. For these reasons, the labor member of the panel feels that a rate of 95 cents per hour for this classification is a fair and equitable rate and is within the stabilized rate for workers of similar skills in the area.

(b) Gardener

There is only one man involved in this classification. Since a part of his time is spent working with the laborers, the same applies to him as applies to the laborers. In addition, the work he is required to do as a gardener certainly requires greater skill and experience than is usually required of a laborer in other plants in the area. This member of the panel feels that taking care of an acre and one-half of lawn and trimming and pruning 1,000 feet of shrubbery is more than just common labor work. For these reasons, this member of the panel feels that a rate of 95 cents per hour for this classification is a fair and equitable rate and is within the stabilized rate for workers of similar skills in the area. [The labor member] feels that particular consideration should be given this classification because of the very nasty working conditions. The man is required to work outside in all kinds of weather, rain or shine. For this alone, the labor member feels that a rate of 95 cents per hour for this classification is a fair and equitable rate and is within the stabilized rate for jobs of a similar nature in this area.

(d) Pipefitter, (e) Electrician, and (f) Utility Mechanic

The above three classifications are skilled maintenance men, and the following argument applies to all of them.

In view of the fact that there is a special panel of the War Labor Board now investigating the rates of skilled maintenance men in this area, it is only fair to the workers involved in this dispute to defer action on their rates in this dispute until such time as the special panel has reported its findings. For this reason, this member of the panel recommends that any action on the three above classifications be deferred until such time as the special panel of the War Labor Board on skilled maintenance workers has reported its findings.

(g) Hooker

This member of the panel concurs in the recommendation that the rate for this classification be $1.05 per hour.

(h) Outside Truck Drivers

This member of the panel concurs in the recommendation of the panel on this classification.

(i) Crane Operators

This member of the panel feels that, because of the policy of the War Labor Board, he must accept the rate recommended for this classification which is

$1.09 per hour but does not concur that the stabilized rate set by the War Labor Board is high enough or correct.

(j) Hydraulic Mechanic

By stipulation of the parties, this item has been withdrawn and was not considered by the panel.

(k) Inside Truck Driver

From a reading of the panel's recommendations on this classification, one could easily draw the conclusion that there was an established rate range of 92 cents to $1.03 per hour. This is not true. There is no rate range on this classification. There are two separate and distinct rates. One group of truck drivers get 82 cents per hour, while another group of truck drivers get $1.03 per hour. This is clearly explained by the company in their letter of Aug. 17 when they stated, "As for an explanation of the $.82 to $1.03 rate range for this classification, this is not a rate range, it is 82 cents for truck drivers on Line 7, and $1.03 for the men on the rim production department." In other words, the inside truck drivers in the plant get $1.03 per hour except those working with Line 7. This, in spite of the fact that all inside truck drivers do the same work. There is not one iota of difference between the jobs performed by the truck drivers who work with Line 7 and the other truck drivers in the plant. This is clearly an intra-plant inequality which should be immediately corrected. For these reasons, this member of the panel recommends that all of the inside truck drivers in the plant be paid $1.03 per hour, including the truck drivers on Line 7.

(l) Experimental Men

This member of the panel concurs in the recommendation of $1.40 per hour for this classification.

(m) Tool Crib Attendants

This member of the panel feels that, because of the policy of the WLB he must accept the rate recommended for this classification of $1.03 but does not concur that the stabilized rate is either high enough or correct.

As for the recommendation of the panel [that] a separate classification of head crib attendant be set up with a clear description of his duties and responsibilities—with this the labor member concurs.

(n) Pickling and Plating Operator

This member of the panel feels that, from the job descriptions furnished by the company and the union on this classification, these workers have a much higher degree of responsibility and require a good deal of experience to perform their jobs. The responsibility and experience required in this plant is far greater than the responsibility and experience required by the War Labor Board for a similar classification. For this reason, this member of the panel recommends that the rate for this classification be $1.15 per hour.

(o) Production Line No. 7

The work performed on this line is identical with that performed on other lines in the plant, particularly the side ring line. There is not one iota of difference between these two lines. This was revealed by an inspection of this line by the panel. It should be pointed out, however, that the Line No. 7 was not in operation at the time the panel visited the plant. All the panel saw was some of the parts manufactured on Line No. 7. Furthermore, a description of the work performed on Line No. 7 meets fully the description of punch press operator, skilled, as outlined in the WLB job descriptions.

This member of the panel feels that, because there is no difference in skill between Line No. 7 and other lines in the plant which pay $1.03 per hour and because a description of the work fully meets the requirements for punch press operator, skilled, as set up by the WLB, and because these employees on Line No. 7 are not receiving the stabilized rate for punch press operator, skilled (nor the rate paid other employees performing exactly the same work in the plant), a serious intra-plant inequality exists which should be corrected. The recommendation of 92 cents per hour for these workers will not correct this inequality. It will only emphasize it because there are occasions when the company is required to transfer workers from Line No. 7 to other lines in the plant and vice versa. Of course, when this is done the employees' rate also changes, and a great injustice is done.

For these reasons, this member of the panel feels that the inequality ought to be immediately corrected and a rate of $1.03 per hour paid on Line No. 7.

The labor member wishes to add this additional comment. The work on Line No. 7 is not lighter than the side ring line; it is just as heavy or heavier. It is, however, lighter than

the rim line. Furthermore, there are other lines in the plant which are manned proportionately with the same number of female employees as Line No. 7.

(p) Production Line Welders

The dispute over the rate for this classification arises out of the same conditions as are outlined above in relation to Line No. 7. The welders in question are part of Line No. 7. These welders on Line No. 7 perform exactly the same type of welding operation as is performed on other lines in the plant, and it is a serious intra-plant inequality which should be corrected. The recommendation of 92 cents per hour does not do this.

For the reasons stated above in (o) and (p), this member of the panel recommends that these welders be paid the same rate as other welders in the plants since they do identical work. The rate recommended is $1.06 per hour.

(r) Production Line No. 15

This member of the panel feels that the recommendation of 80 cents per hour for this classification does not meet the problem arising out of this dispute. The workers on this line perform a bench-assembly operation which can be classified as assembler, bench, semi-skilled. The stabilized rate for this classification is 90 cents per hour. It is true that these workers earn a bonus, but it is equally true that there are many jobs which they assemble on which the company does not pay a bonus. The only jobs run on this line which pay a bonus are the so-called peacetime jobs. The so-called war jobs do not pay a bonus. Furthermore, it is a well established and recognized policy of the War Labor Board that workers working on an incentive basis ought to earn approximately 20 per cent more than straight hourly rate workers. This member of the panel feels that, on a straight hourly rate basis, these workers are entitled to at least 90 cents per hour. On an incentive basis (which covers only a portion of their jobs), they would earn approximately 20 per cent more. For the reasons above stated, the labor member of the panel recommends a rate of 90 cents per hour for this classification.

(s) Production Line 15 Operators and (t) Production Line 15 Service Men

Both of the above classifications can be jointly treated, as a determination of the dispute surrounding them is based on resolving the dispute on Production Line 15.

The company and the union both agree that the present differential existing between these two classifications and Production Line 15 should be maintained. The present rates are: Production Line No. 15, operator, $.75, and Production Line No. 15, service man, $.82-$1.03.

If the War Labor Board approves the rate of $.90 per hour for Production Line No. 15, then the above classifications should be: Production Line No. 15, operator, $.95 and Production Line No. 15, service man, $1.03.

(u) Salvage Repair, Jettison Tank Division

The dispute regarding the rate of this classification revolves around the question that repair work should pay more than the original job. It is a standard practice in industry as a whole in this area to pay from five to ten cents per hour more for repair work than for the original job. In this case, repair and salvage work requires a great deal more skill and ability than is required to perform the original job. Furthermore, repair and salvage work requires knowledge of more than one occupation since [the workers] are required to do metal finishing as well as soldering.

For these reasons, this member of the panel recommends a rate of $1.16 per hour for this classification.

RETROACTIVE DATE

Issue 6 deals with retroactive date.

This member of the panel feels that it has been War Labor Board policy to approve a retroactive date on wages based on the date when wage negotiations began. This member of the panel therefore recommends the retroactive date of Mar. 1, 1944.

Signed by Robert Kantor, labor representative.

Dissenting Opinion of the Employer Representative

Jan. 17, 1945

REVISED STATEMENT

Due to the work stoppage which took place on Oct. 7 and 8, all previous concordance with the panel by the industry member is withdrawn, and the following dissenting opinions are submitted:

Termination of Executive Order 9240

Since we do not know what the national policy governing hours of the

workweek will be after the war, there should be no binding agreement on either party. It is, therefore, my opinion that Sec. 3, Subsection 11, Art. 5, of the agreement should be supplemented as follows:

"At the termination of Executive Order 9240, the matter of premium time will be negotiated by the parties."

Seniority for Employees not Covered by the Agreement

Since this company draws its supervisory personnel from the ranks, I do not feel that it is fair to the employee or to the company to impede a man's advancement by causing him to lose his seniority in accepting promotion. From the standpoint of the hourly workers, they would be far better off to be under supervision made from the ranks than outside supervision. It is my contention, therefore, that Sec. 12, Art. 4, should read as follows:

"Any employee who is promoted by, or accepts a position with, the Company which is outside the bargaining unit and who thereafter returns to a position within the bargaining unit shall not lose the seniority accumulated by him during such period."

Call-In Pay

In order to clarify the intention of the panel on this issue, it is my contention that Sec. 4, Art. 5, should read as follows:

"Employees required to report for work at the regular starting time and prevented from performing services that day shall receive a minimum of three hours' pay at their regular hourly rate for that day. The Company reserves the right to avail itself of the service of the employees for those three hours. The only exceptions being:

"A. In the case of a major breakdown, when the Company shall endeavor to notify all employees possible.

"B. No allowance or payment shall be made where work prevention is occasioned by a labor dispute."

Subdivisions (o), (p), (r), (s), and (t)

It is my contention that the bonus rates on these lines are well above the base rates and that the usual percentage claimed is being earned; therefore these base rates and, accordingly, the bonus rates should not be disturbed.

Signed by R. W. Dugger, representing employers.

ALABAMA MILLS, INC.—

Decision of National Board

In re ALABAMA MILLS, INC. and CRESS-TEX CORPORATION [Jasper and Russellville, Ala.] *and* TEXTILE WORKERS UNION OF AMERICA, LOCALS 290 and 303 (CIO). Case No. 111-9091-D, Apr. 26, 1945 (made public Aug. 1, 1945).

STRIKES—No-strike, no-lockout clause—Discipline for violation of contract

Contract should provide that there shall be no strikes or lockouts for period of contract. Regional Board's order providing for no strikes, lockouts, interference with production, and picketing and directing that any employee, supervisory or otherwise, who violates or advocates violation of contract would be disciplined on first offense and discharged on second offense is vacated.

CONTRACTS—Extension of contract after termination notice

Board vacates Regional Board's order directing inclusion in contract of clause providing that, if notice of termination or desire to revise agreement is given during war emergency, contract should be extended beyond termination date until new agreement is reached or matter is resolved by War Labor Board.

For other rulings see Index-Digest 165.445 and 37.365 in this or other volumes.

Majority decision of Board amending directive order of Regional Board IV (Atlanta). Public members concurring: Dexter M. Keezer, Lewis M. Gill, Jesse Freidin, and Nathan P. Feinsinger. Employer members dissenting on Par. II: Earl Cannon, Lee H. Hill, Charles S. Roberts, and Frederick S. Fales. Labor members dissenting on Par. IA: Delmond Garst, Carl J. Shipley, James A. Brownlow, and Elmer E. Walker.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted in part the petition filed by the company for review of the directive order dated Dec.

15, 1944, issued by the Fourth Regional War Labor Board in the above entitled case and having reviewed the merits of the case, hereby takes the following action.

I. The terms and conditions of employment set forth in the Fourth Regional War Labor Board's directive order of Dec. 15, 1944, in this case shall govern the relations between the parties, with the following modifications:

A. No Strike and Disciplinary Action: Par. 8 of the said directive order is hereby vacated, and the following clause is substituted therefor:

There shall be no strikes or lockouts during the period of this agreement.

B. Termination Provision: Par. 10 of the said directive order is hereby modified as follows: The last sentence of the clause, which relates to interim extension of the agreement, is hereby deleted.

II. The remainder of the petition for review is hereby denied.

III. The terms and conditions of employment set forth in said directive order of Dec. 15, 1944, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board IV (Atlanta)

Dec. 15, 1941

I. The Regional War Labor Board for the Fourth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Recognition

The company recognizes the union as the exclusive bargaining agency for all employees (except office employees, executives, overseers, and secondhands) of the company at its Jasper and Russellville units in matters pertaining to wages, hours, and other conditions of employment.

2. Managerial Functions

(a) Subject to the provisions of this agreement and the terms herein set forth, the following prerogatives are reserved by, and shall continue to be vested in, the company, although not intended as a complete list of them: The right to hire employees, the right to discharge employees for just cause, and the right to manage the properties. A claim of unjust discharge may be taken up as a grievance under the provisions of this contract.

(b) Nothing in this section shall be used for any anti-union activities.

3. Workweek, Reporting Time, Overtime, and Holidays

(a) The company agrees to pay time and one-half for all work in excess of eight hours in any one day. The company agrees to pay time and one-half for the sixth day worked (provided the employee has worked all time made available to him up to eight hours per day on his regular job and shift) and doubletime for the seventh consecutive day worked in any workweek. The company agrees that no employee covered by this agreement shall be laid off during the normal workweek of five consecutive days for the purpose of requiring him or her to work on the sixth or seventh day at straight time. The normal workweek for production and maintenance employees will be Monday through Friday. The normal workweek for watchmen and scrubbers shall be any five consecutive days for which each such employee is scheduled. Regular employees shall report on their jobs regularly for five consecutive days during the normal workweek, and each such employee shall be permitted to work at his or her job if it runs.

(b) The following holidays shall be observed: New Year's Day, July 4th, Labor Day, Thanksgiving Day, December 24th, and Christmas Day. The company agrees that time and one-half will be paid for any work performed on any of these holidays. If any holiday falls on Sunday, the following Monday shall be observed.

(c) The company agrees to pay each regular employee who reports for work on any regular working day two hours at his or her regular rate of pay for that day provided no work is available. This shall not be applicable in the event an employee has been notified prior to the starting of his regular shift or in the event there is a major mechanical breakdown or power failure due to outside causes, nor shall it apply in the case of any employee who was not working on the last previous work day unless such employee

was actually notified to report for work, and reported, and was not given at least two hours' work at his or her regular rate of pay. This reporting time provision shall not apply to spare hands not assigned to some regular job.

4. Seniority

(a) Promotions shall be based on seniority provided the employee entitled to promotion on the basis of seniority is qualified or has demonstrated ability to qualify to perform the work. Departmental seniority shall prevail provided the employee affected is qualified or has demonstrated ability to qualify to perform the work. The superintendent and overseers shall be the judge of qualifications and ability, subject to the grievance proceedings as provided in other sections of the contract. Promotions shall be temporary for a trial period not to exceed 30 days, during which time the old job of each promoted employee shall not be considered a permanent vacancy. If the employee promoted proves to be incompetent or voluntarily gives up the new job during this trial period, he or she will be put back on his or her old job without loss of seniority. After the 30-day trial period, the promotion will be permanent, and the old job of the employee promoted will be regarded as a permanent vacancy. In case of reduction of force due to lack of work, layoffs in each department shall be in the reverse order of seniority, qualifications and ability being sufficient. Seniority for each employee shall begin on the date he or she last entered the employment of the company in his or her department. The company will post seniority rosters in each department, listing the names of all members in each department, showing the date of last employment. If a complaint should arise over the rosters after they have been posted, such complaint must be filed by the grievance committee with the mill within 30 days after the posting of such rosters, and, in cases where no complaints are filed within such 30-day periods, the rosters shall be final.

(b) All new employees shall be considered probationary for the first four weeks of their employment. If retained in the service of the company after the probationary period, their seniority shall date back to the beginning of the probationary period. Nothing in this clause shall operate to deprive any employee, whether probationary or permanent, of his rights to carry his grievance through the grievance and arbitration machinery of the contract or to deprive him of any other rights under collective bargaining.

(c) The parties shall negotiate an agreement on the subject of the period required for advancement to the job rate of each classification for new experienced employees and for new inexperienced employees, and they shall either come to an agreement within 30 days or refer the question to the arbitration procedure under the contract.

5. Work Load and Assignments

(a) It is expressly recognized and agreed that the best interests of the company and the employees require efficient and reasonable job or work assignments, which shall include adequate fatigue time and all other usual elements. It is, therefore, agreed that job assignments may be changed from time to time so as to obtain and maintain efficient and reasonable work loads and machine and labor standards provided that management shall give to the committee at [the] mill involved at least seven days' notice of any proposed changes in job or work assignments unless the proposed change is of an emergency character or requires prompt adoption because of its effect upon other operations of the plant, and, in such cases, the management will give the committee such notice as is practicable under all the circumstances. Immediately upon the giving of notice, there will be a discussion of the matter between the company and the committee in an effort to have mutual accord. Should there be differences of opinion that cannot be adjusted, the employees agree to accept such changes as [are] made with the understanding that any adjustments that may be found necessary will be made by the company as rapidly as conditions will permit, and any adjustments that may be necessary in wages will be retroactive to date of change. The union and the company agree that such change or changes will be accepted on a trial basis for four workweeks from the time the actual work involved in the change started before resorting to arbitration as provided in Sec. VII of the contract.

(b) The piece rates or hourly rates, as the case may be, of any group of employees affected by new or changed work assignments shall be fixed so that such employees can earn as much

money as they earned on the old work assignment except in cases in which the work load being changed is found by the company and the union to be clearly out of line with the work load standards of the company or with other satisfactory work loads in the plant or found to be such as the result of arbitration. The arbitrator shall have the right to adjust compensation retroactive to the date of change. Any employee who refuses to accept such changes made in accordance with this section shall be adequately disciplined.

6. Reference to Wages in Contract

(a) Certain proposals for wage increases and related matters, heretofore made by the union with the company, are now pending before the NWLB in Case 111-5110-D. Pending the decision of the Board in that case, the present hourly and piece rate for all employees covered by this agreement shall continue in effect except as to any changes which may be made in the piece rates at the Jasper unit pursuant to the agreement between the parties dated Mar. 7, 1944, as supplemented by the agreements dated Mar. 21, 1944, and June 5, 1944. After the decision of the NWLB in the above mentioned case, either party may propose to the other, at any time, general increases or decreases in wages by giving the other party written notice of any change or changes desired. The company and the union will meet as promptly as possible in an endeavor to reach an agreement, and, if no agreement is reached within two weeks, then the parties shall in all respects comply with Executive Order 9017 [1 War Lab. Rep. VII; WCDS 19]. General wage increases or decreases shall not be subject to arbitration machinery.

(b) The mutually agreed upon or directed wage scale by departments and occupations shall be reduced to writing and initialed by the parties and made a part of the contract. Any amendments during the life of this contract shall be handled in the same manner. It is agreed that the wage scales shall not be made public.

7. Posting of Piece Rates, Production Records, and Working and Shop Rules

(a) Piece rates will be kept posted in each department at all times. Production records of each employee shall be determined in accordance with the company's present practice and shall be posted within 24 hours, provided that in exceptional circumstances, when this time limitation would impose an unreasonable additional burden on the company's accounting department, a longer period, not to exceed 72 hours, may be taken for posting such production records. It is understood that, in the case of the weave rooms, production records may be posted not less frequently than weekly.

(b) All working rules and shop rules concerning wages, hours, and other working conditions which may be mutually agreed upon, as provided in Sec. 3c of the contract, shall be posted on the bulletin board. The company may post such other rules as it deems necessary in performing its managerial functions.

8. No Strike Section and Disciplinary Action

The union and the employees agree that, during the term of this agreement or any renewal thereof, there shall be no calling, authorization, or condoning of strikes or any acts of similar nature to interfere with production or picketing of any kind or form whatsoever, however peaceable, and the company agrees that there shall be no lockout during the term of this agreement or any renewal thereof. Any employee, supervisory or otherwise, who violates or advocates the violation of this agreement shall, upon the presentation of reasonable proof by either party to the other, be adequately disciplined on first offense and, on second offense, shall be discharged and will be reemployed only by mutual consent of the parties hereto.

9. Union Security

"A. All employees who, on Jan. 6, 1945, are members of the Union in good standing, in accordance with its constitution and by-laws, and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board and the Company with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"B. If a dispute arises as to whether an employee: 1. Was a member of the Union on the date specified above or 2. was intimidated or coerced during the 15-day 'escape period' into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"C. If a dispute arises as to whether an employee: 1. Has failed to maintain his membership in the Union in good standing after the aforesaid date or 2. was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement; in the absence of such contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties.

"D. The Company shall, during the life of the agreement between the parties, deduct each week from the pay of each of its employees who is a member of the Union his present union dues and shall promptly remit the same to the treasurer of the Union. The Union's present initiation fee shall also be deducted by the Company from the pay of new members of the Union, and said fee shall likewise be remitted to the treasurer of the Union.

"Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision [12 War Lab. Rep. XVIII; WCDS 321], in the absence of some other procedure agreed to by the parties."

10. Termination Provision

This agreement shall take effect on the 21st day of December 1944 and shall remain in full force and effect for one year and from year to year thereafter unless, not more than 45 days nor less than 30 days prior to the expiration date or any anniversary thereof, either party gives the other written notice of a desire to amend, revise, or terminate the agreement. In the event the notice is to amend or revise, it shall specify the changes desired, whereupon all other parts of the agreement shall automatically be renewed for another year. Whether the notice is to amend, revise, or terminate, the parties shall, during the war emergency, continue to operate under the provisions of the agreement thus subject to change or thus terminated, as the case may be, until an agreement is reached or the matter resolved by directive order of the National War Labor Board.

11. Contract Agreement

The agreement of the parties made during negotiations prior to and at the panel hearing and this directive order shall be made the contract of the parties in this case.

II. The terms and conditions of employment embraced in the above and foregoing paragraphs shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Signed by E. B. Schultz and Paul L. Styles, public members; Sydney M. Cone and Frank A. Costangy, employer members, subject to dissent on Issues 8 and 9; and C. B. Gramling and E. B. Pugh, labor members, subject to dissent on Issues 2-a-b and 4-a.

Report and Recommendations of the Panel *

Aug. 18, 1944

BACKGROUND

This controversy arose out of the difficulties associated with the inability of the parties to renegotiate an existing contract. Approximately 440 employees are involved.

The original contract dated Apr. 24, 1942, was renewed on Apr. 24, 1943. The contract which expired Apr. 24, 1944, has been continued in effect as a result of agreement between the parties and an order entered by the Fourth Regional War Labor Board on July 10, 1944.

The parties have had bargaining relations in the Russellville plant for a period of approximately five years and at the Jasper plant for a period of approximately ten years. It was not, however, until April 1942, as a result of a panel hearing of the National War Labor Board, that a written document came into existence governing the relationships between the two parties. Previous to that time, the parties operated under verbal agreements and general shop rules.

PARTIES TO THE DISPUTE

Company

The company is a Delaware corporation having been organized in 1932 as a result of bankruptcy proceedings. The company owns and operates 10 cotton textile mills in 10 relatively small, unindustrialized communities in the State of Alabama. Only two units, one located at Jasper, Ala., and the other at Russellville, Ala., are involved in this controversy.

The company is engaged in the production of textile products with approximately 55 per cent of production capacity engaged in government subcontract work at the present time. The present level of production is approximately one-third less than normal peacetime production levels. At the present time, approximately 52 per cent of the employed personnel are men and 48 per cent women.

Union

The Textile Workers' Union of America (CIO) is the bargaining agent for all employees in the Jasper and Russellville plants, excluding office employees, executives, overseers, and secondhands.

* Ed. Note: Only that portion of the panel report relating to Issue 7, no-strike section and disciplinary action, is reproduced.

ISSUES

It was mutually agreed by the company and union that the following were the issues in question for consideration on the part of the panel:

1. Verbiage with reference to recognition; 2. Workweek, reporting time, overtime, and holidays; 3. Seniority; 4. Reference to wages in contract (wages machinery); 5. Posting of piece rates and production records; 6. Work load and work assignments; 7. No strike section and disciplinary action; 8. Union security; 9. Check-off; 10. Contract termination; and 11. General terms of contract.

[Ed. Note: Issues 1 through 6, discussed in the panel report at this point, are omitted.]

7. No Strike Section and Disciplinary Action

Union's Position

The union requests the inclusion of this section of the statement, for disciplining any employees, supervisory or otherwise, who violates or advocates the violation of this agreement, for the following reasons: 1. That such a provision is desirable from the viewpoint of reemphasizing the desirability of the company and union using the contract as a means of amicably settling all disputes, and

2. That, since the union has agreed to forego resort to force during the war emergency period, it is desirous of full protection under the contract.

Company's Position

The company objects to the provision providing for disciplinary action of supervisory employees for the following reasons: 1. That supervisory employees are excluded from membership in the union, and, hence, an effort on the part of the union to bargain for them is improper; 2. That such a provision might lead to an attempt on the part of the union to compel the company to discharge supervisory employees, which would mean the usurping of power on the part of the union which was never intended for the union, and 3. That the company is responsible if it fails to live up to the provisions of the contract and that it is the prerogative of the company to decide what punishment should be imposed upon its supervisory employees if they are found guilty of violating the contract.

Recommendation

The panel recommends the following section with reference to no strike and disciplinary action:

"(a) The Union and those it represents agree that it will not engage in, initiate, authorize, sanction, or sponsor any strikes, slow downs, or stoppages of work, and the Company agrees not to lock out any employees or group of employees as this agreement provides for the amicable adjustment of differences, disputes, and grievances.

"(b) Any employee, supervisory or otherwise, who violates or advocates the violation of this agreement shall, upon first offense, be adequately disciplined and, upon second offense, shall be discharged and be reemployed only by mutual consent of the parties hereto."

[ED. NOTE: Issues 8 through 11, discussed in the panel report at this point, are omitted.]

Signed by: Frank J. Welch, representing public; G. C. McCullough, representing employers, subject to dissent on Issues 7, 8, 9, and 10; and J. P. Mooney, representing labor, subject to dissent on Issues 1, 2, 4, and 6, with opinion.

NEW YORK HERALD-TRIBUNE—

Decision of National Board

In re THE NEW YORK HERALD-TRIBUNE [New York, N. Y.] *and* AMERICAN NEWSPAPER GUILD, THE NEWSPAPER GUILD OF NEW YORK, LOCAL 3 (CIO). Case No. 111-8188-D, July 3, 1945 (made public July 26, 1945).

Amending 22 War Lab. Rep. 430.

MAINTENANCE OF MEMBERSHIP—CHECK-OFF—Union security award despite finding by subsidiary agency of "irresponsibility"

Union of newspaper employees is entitled to maintenance of membership, despite finding of Newspaper Commission that union was irresponsible on grounds that it (1) demanded changes in contract prior to expiration, (2) repudiated agreement made by union representatives prosecuting case before Commission, and (3) failed to assume responsibility for strict maintenance of contract. Commission's order denying maintenance of membership is therefore reversed where Commission found that union had kept its no-strike pledge and had democratic constitution. Commission is requested, in view of Board's action on maintenance-of-membership issue, to issue order on union's request for check-off.

For other rulings see Index-Digest 110.165 and 110.260 in this or other volumes.

WAGES—COST-OF-LIVING ADJUSTMENTS — Application of 15-per cent rule—Increase applied to minima

Newspaper Commission's order denying union's request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.

Newspaper Commission's award of general increase of $2.50 weekly to employees earning less than $50 is remanded for reconsideration in light of current policies. Award was made on basis of finding that, under interpretation by War Labor Board of arbitration award involving same parties and involving question of calculation of Little Steel increase, employees were entitled to further average increase of 77 cents an hour. Instead of granting 77 cents to all employees, however, Commission made equivalent award of $2.50 to employees earning less than $50 on ground that it is WLB policy to favor low-paid employees in making cost-of-living adjustments.

For other rulings see Index-Digest 245.310 in this or other volumes.

PREMIUM WAGE RATES—Night-shift premiums for editorial employees

Newspaper Commission's denial of night-shift premiums for editorial employees of morning newspaper is affirmed. If issue should arise in connection with new contract, however, Commission is requested to examine issue in light of Board's decisions since date of Commission's order and in light of any changed circumstances since issue was last considered.

For other rulings see Index-Digest 140.565 in this or other volumes.

Majority decison of Board amending decision of Daily Newspaper, Printing and Publishing Commission. Public members concurring: Jesse

Freidin, Lloyd K. Garrison, and Nathan P. Feinsinger. Employer members dissenting on Pars. I and V(b): William L. Maloney, Earl N. Cannon, and Charles Roberts. Labor members dissenting on Pars. III, IV, and V(a): Van A. Bittner, John Brophy, and Robert J. Watt.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted in part the petition filed by the union for review of the Daily Newspaper, Printing and Publishing Commission's directive order of Dec. 23, 1944 [22 War Lab. Rep. 430], in the above entitled case and having reviewed the merits of the case with respect to union security, wages, and night-shift differential, hereby orders:

I. Maintenance of Membership

"(a) All employees who on Aug. 8, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Newspaper Commission with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein. No union member shall be expelled from or penalized by the Union because of his convictions or because of anything he wrote or failed to write for publication.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership there, such dispute may be submitted for determination by an arbitrator to be appointed by the Newspaper Commission. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date or (3) has been expelled from or penalized by the Union because of his convictions or because of anything he wrote or failed to write for publication, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement the arbitrator will be selected by the Newspaper Commission on due application.

"In any dispute of the character described in (2) above, the employee shall have the absolute right to present all relevant facts in his defense before the arbitrator. The decision of the arbitrator shall be final and binding upon the parties."

II. Check-off

In view of the foregoing provisions, the Newspaper Commission is requested to issue a directive order with respect to the union's request for check-off.

III. Arbitration

The Newspaper Commission's order of Dec. 23, 1944, is affirmed in this respect.

IV. Management's Obligation to Furnish Guild with Names of New Employees

The petition for review of this issue is denied.

V. Wages

(a) Adjustments of Contract Minima

The Newspaper Commission's order of Dec. 23, 1944, is affirmed in this respect. However, should a dispute arise over this issue in connection with a new contract, the Commission is requested to examine this issue in the light of National Board decisions made subsequent to Dec. 23, 1944, and any changed circumstances since the case was last considered by the Newspaper Commission.

(b) General Wage Increase

The issue of a general wage increase is remanded to the Newspaper Commission for consideration in the light of current policies.

VI. Night-Shift Differential

The Newspaper Commission's order of Dec. 23, 1944, is affirmed in this respect. However, should a dispute arise over this issue in connection with a new contract, the Commission is requested to examine this issue in the light of National Board decisions made subsequent to Dec. 23, 1944, and any changed circumstances since the case was last considered by the Newspaper Commission.

VII. Subject to the foregoing provisions, the terms and conditions of employment set forth in the Newspaper Commission's directive order of Dec. 23, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

*Report and Rulings of the Commission**

[ED. NOTE: Parties to the dispute, background of the dispute, listing of issues, and issue A, union security (22 War Lab. Rep. at 432), discussed in the Commission's report at this point, are omitted.]

B. ARBITRATION OF DISPUTES

Union's Position

The union proposed the establishment of machinery for the arbitration of all disputes arising during the term of the contract which cannot be adjusted through normal grievance procedure. No specific language for the clause was proposed.

This request is based chiefly upon two points:

(a) With the exception of the *World-Telegram* contract, all other guild agreements with the major daily papers in New York provide for arbitration of disputes arising under the contract. The provision has been found to be workable and mutually satisfactory.

(b) Since the National War Labor Board's policy is not to accept jurisdiction over disputed discharge cases, failure to include an arbitration clause in the contract would leave the guild no method of settling a dispute and could well lead to further disputes during the term of the contract.

Company's Position

The management submitted a counterproposal clearly setting up machinery for the arbitration of disputes but specifically barring matters relating to assignment, competence, and discharge of employees covered by the agreement from arbitration. The first paragraph of the company's proposal reads as follows:

"The assignment, the competence, or the discharge of an employee who gathers, writes, or edits the news or writes editorial comment are matters to be decided solely by *New York Tribune, Inc.*, and are not arbitrable. Other matters arising under this contract which result in a grievance and which cannot be settled by conciliation will be submitted to arbitration upon the request of either party to this contract."

In support of this position the company states that its counterproposal is in accord with its long term policy with regard to discharges and assignments.

The company refuses to submit discharge and assignment to arbitration for the reason that such arbitration would constitute an infringement upon its right to determine the character of the paper. In its majority opinion dealing with the effect of maintenance of membership upon constitutional guarantees of freedom to the press [14 War Lab. Rep. 355], the National War Labor Board held that freedom of the publisher to determine his publication's character resides in his right to hire whom he pleases, in his right to edit copy before its appearance in the publication, and in his right to discharge or otherwise to discipline any employee if he fails to conform to whatever standards the publisher may see fit to prescribe. In this case, the publisher claims that arbitration of discharges would tend to deprive him of this last privilege which is rightfully his.

Discussion and Ruling

The representatives of the guild, during the hearing, made a counterproposal on this issue which management accepted. The result of this agreement between the parties was to remove this issue from the questions in dispute.

* ED. NOTE: Only those portions of the Commission's report relating to arbitration of disputes, preferential hiring, and wages—Parts (1) changes in classification, (2) adjustment of salaries, (3) general increase, (4) wage reopening clause, and (5) night differential—are reproduced.

Under date of Nov. 1, 1944, the Commission was notified that the New York Guild had repudiated the agreement made by its representatives and was withdrawing arbitration as one of its issues in dispute, as may be seen from the copy of the following letter:

"Dear Mr. Deibler:

"On Sept. 21, 1944, representatives of the Newspaper Guild of New York and the management of the *New York Tribune, Inc.*, reached tentative agreement with respect to one point then in dispute before the Daily Newspaper Printing and Publishing Commission. As a result, this matter was withdrawn as a dispute.

"In accordance with guild procedure, this matter has come before the Newspaper Guild of New York, and the tentative agreement has not been ratified. We are notifying the Commission and the *New York Herald Tribune* that the matter in dispute, namely, the guild's request for arbitration, is being withdrawn. So far as the Newspaper Guild is concerned, our proposal for arbitration of all disputes is now no longer an issue between the guild and the *New York Herald Tribune.*"

This action by the guild has raised two vital questions for the Commission:

(a) When representatives appear before the Commission at a hearing, is the Commission justified in assuming that they are clothed with authority to act for their respective principals?

(b) When agreements are reached between the parties at a hearing, can such agreements subsequently be repudiated?

The Commission has regularly held that, when parties in dispute come before the Commission, the representatives are authorized to act for their principals. The Commission can act on no other assumption and perform the duties committed to it. Any reservations that the representatives may have of their authority to act should be checked with their principals prior to their appearance before the Commission.

In line with this assumption, the Commission cannot recognize the right of either party to repudiate agreements made by their representatives during regular hearings before the Commission.

In accordance with this conclusion, the Commission majority rules that the arbitration clause agreed to between the parties at the hearing before the Commission be incorporated in the new contract.

C. PREFERENTIAL HIRING

This proposal was withdrawn by the guild.

D. WAGES

1. Changes in Classification

Union's Position

The guild proposes to take receptionists out of the group in which they are now listed, "copy control clerk, head copy boy, stenographers, and receptionists," and set up a separate classification for this job, with new minimums. The guild proposes to break down the category of "summary clerk, financial assistant, and tabulators" into two groups: "Summary editor" and "statisticians." It is proposed to add the classification "assistant head of telephone recording room" to the contract and to add make-up editor's assistant, assistant head of general copy desk, and assistant heads of sports copy desk to Group 20b, which now includes only assistant day city editors and assistant head night city editors.

The union's contention with respect to these changes is that its proposals are based upon an analysis of job content and its findings that either job content has changed or that the initial classifications were erroneous.

Company's Position

The company opposes any change in job classifications or categories.

In support of its position, the company claims that classification of employees and of jobs is primarily a function of management and that no change in the duties of the various positions affected by these proposals has occurred since the classifications were set up in 1943. Further, the company contends that the true purpose of the guild's proposals is to secure for certain employees hidden wage increases by means of changing them from one category to another carrying a higher minimum rate.

Discussion and Ruling

The Commission has weighed the arguments and evidence on the subject of changes in job classification as presented in this case. The question of setting proper job classifications is an issue that should be settled by the

parties who are familiar with the actual operations of the plant. The Commission majority does not find that the evidence presented is conclusive of a need for the change. In accordance with past action by the Commission (*King Features*, 111-3090-D; *Philadelphia Record*, 111-6841-D; *Philadelphia Inquirer*, 111-6569-D; *Camden Courier Post*, 111-6841-D), the Commission majority votes to remand the issue to the parties for settlement.

2. Adjustment of Salaries

Union's Position

The guild proposes increases in certain minimum rates, as set forth in the table below.

Classification	Present Minimum	Guild Proposal
1. Home Institute Maid		
To start	$18.00	$22.00
After 1 Yr.	20.00	25.00
2. Copy Boy & Girl		
To start	16.50	23.00
After 1 Yr.	19.00	25.00
After 2 Yrs.	22.00	26.00
After 3 Yrs.	None	27.00
3. Picture File Clerk		
To start	23.00	27.00
After 1 Yr.	25.00	28.00
After 2 Yrs.	27.00	30.00
After 3 Yrs.	None	32.50
4. Clipper, Biographical Filer		
To start	22.50	25.50
After 1 Yr.	24.50	27.50
After 2 Yrs.	26.50	29.50
After 3 Yrs.	29.25	32.25
5. Copy Control Clerk, Head Copy Boy, Stenographer, Receptionist		
	Receptionist	
To start	23.00	33.00
After 1 Yr.	25.00	36.00
After 2 Yrs.	27.00	39.25
After 3 Yrs.	30.00	43.25
	Head Copy Boy, Copy Control, Stenographer	
To start	23.00	28.00
After 1 Yr.	25.00	30.00
After 2 Yrs.	27.00	32.00
After 3 Yrs.	30.00	36.00
6. Subject Filer & Researcher		
To start	30.00	34.00
After 1 Yr.	32.00	36.00
After 2 Yrs.	34.00	38.00
7. Home Institute Researcher & Tester, Dark Room Asst.		
To start	25.00	30.00
After 1 Yr.	30.00	35.00
After 2 Yrs.	35.00	40.00
8. Secretary		
To start	27.50	30.00
After 1 Yr.	30.00	32.50
After 2 Yrs.	32.50	34.50
After 3 Yrs.	35.00	37.50
9. Summary Clerk, Financial Asst., Tabulator		
	Statistician	
To start	25.00	37.00
After 1 Yr.	30.00	42.25
After 2 Yrs.	35.00	45.00
After 3 Yrs.	40.00	50.00

Classification	Present Minimum	Guild Proposal
	Summary Editor	
To start	25.00	32.50
After 1 Yr.	30.00	36.50
After 2 Yrs.	35.00	42.50
After 3 Yrs.	40.00	47.50
10. Telephone Recording Opr., Asst. Head, Telephone Recording Room	*Telephone Recording Opr.*	
To start	30.00	39.50
After 1 Yr.	35.00	44.75
After 2 Yrs.	40.00	47.50
After 3 Yrs.	None	52.50
	Asst. Head Telephone Recording Room	
	None	57.50 flat
11. Book Cataloguer; Biographical Marker		
To start	36.00	40.00
After 1 Yr.	38.00	42.50
After 2 Yrs.	40.00	45.00
12. Washington Teletype Opr., Asst. Exchange Editor		
Flat	40.00	45.00
13. Stamp, Puzzle, Exchange Editor		
Flat	45.00	50.00
14. Subject Marker		
To start	42.00	47.00
After 1 Yr.	45.00	50.00
After 2 Yrs.	48.00	53.00
15. Associate Critic, Asst. Librarian		
Flat	50.00	*Asso. Critic,* 85.00 flat *Asst. Lib.* 60.00 flat
16. Radio Editor		
To start	45.00	50.00
After 1 Yr.	50.00	55.00
After 2 Yrs.	55.00	60.00
17. Editoral Page Researcher, Reporter, District Man		
To start	27.00	30.00
After 1 Yr.	37.50	40.00
After 2 Yrs.	47.50	50.00
After 3 Yrs.	57.50	60.00
After 4 Yrs.	None	70.00
After 5 Yrs.	None	75.00 (District Man to Be Deleted)
18. Photographer; News Artist		
To start	30.00	40.00
After 1 Yr.	40.00	50.00
After 2 Yrs.	50.00	55.00
After 3 Yrs.	60.00	65.00
After 4 Yrs.	65.00	70.00
After 5 Yrs.	None	75.00

Classification	Present Minimum	Guild Proposal
19. Rewrite Man; Reporter, Interchangeable on Rewrite or Copy Desk		Rewrite Man; Reporter, Interchangeable on Rewrite or Copy Desk; Assistant Business News Editor, Editor of New Jersey News Pages
To start	60.00	70.00
After 1 Yr.	65.00	75.00
After 2 Yrs.	70.00	80.00
20. Copy Reader; Desk Man Flat	70.00	To start 70.00 After 6 Mos. 75.00 After 1 Yr. 80.00
Asst. Head Day General Copy Desk; Asst. Head General Copy Desk; Make-up Editor (Now Included in Group 20)	70.00	85.00 flat
Asst. Day City Editor; Asst. Night City Editor; Asst. Head Sports Copy Desk (Now Included in Group 20)	70.00	85.00 flat

Group 21.—With respect to this group the guild proposes certain changes in classification:

(a) Top critic to be deleted, Drama, Music, Dance, Film and Art critic and Night Club Editor, reporter-critic, to be substituted.

(b) Make-up Editor, Asst. Head Day General Copy Desk, Asst. Head General Copy Desk: To be deleted from Group 21 and set up as new classification.

(c) Albany, Chicago, Washington, and foreign correspondents. Required experience to be reduced from 4 to 3 years.

In support of this request, the union points out that, of $8.40 per week allowable in 1942 under the Little Steel formula, only an average of $3.22 per week was incorporated in the increases awarded at that time, leaving $5.25 per week still allowable as an increase to be written into the minimums. Thus, the union contends that the contract minimums should be adjusted in such a way that they may include all of that $5.25.

According to the guild, such an adjustment would be in conformity with the policies enunciated by the National War Labor Board, as set forth in the Manual of Instructions issued to members of the Board's staff. The union claims that such an adjustment is necessary for the purpose of preventing intra-plant inequities, in that, unless the adjustment be made, employees returning from military service would be rehired at the minimum rates applicable to their jobs but would not benefit by any general increases which might have been given during their absence but have not been written into the minimums. This, according to the union, makes it necessary that past general increases be incorporated into the minimum rates.

In addition, the union states that contracts should delineate actual working conditions and that, for this reason, the minimum rates should be raised to a level closer to the actual salary rates presently in effect. It is known that the actual rates of many of the employees in the unit are far above the contract minimums.

It is alleged by the guild that the differential which existed between the New York minimums and those in effect in the rest of the country in 1941 has progessively been narrowed and should be restored.

"On the basis of historical interplant relationships, the top minimums for reporters in New York City should at least equal the highest present top minimum in the country. The fact is that it does not, so that reporters being 'promoted' from comparatively small town papers to the great New York City dailies may suffer a step down in rates even though the full amount of their experience elsewhere is credited to them in determining their rate of pay in New York. There is no justification for this nor for a

top contract rate of $57.50 for reporters on the *Herald Tribune* in the face of a rate of $60.00 on the *Bronx Home News*, $65.00 on *Associated Press*, and more than $60.00 elsewhere in the country." (Guild's rebuttal brief, pp. 26 and 27.)

Company's Position

The company submitted a counterproposal which provided for increases in the minimums for the home institute maid and for copy boys and girls as shown below.

Classification	Present Rate	Company Proposal
Home Institute Maid		
To start	$18.00	Flat $20.00
After 1 year...	20.00	
Copy boy and girl		
To start	16.50	20.00
After 1 year....	19.00	21.00
After 2 years...	22.00	22.00

The management also proposed to give to all employees receiving less than $100.00 per week and who fail to receive an increase of 5 per cent as a result of its proposed change in minimum rates an increase of 5 per cent.

According to the management, no change has occurred in the duties of the various positions covered by the contract which would warrant the changes in minimum rates proposed by the guild. Furthermore, the company contends that the schedule of minimum rates established by the Board of Arbitration in 1942 [7 War Lab. Rep. 9] were the result of long and careful study and should be deemed proper. There is no reason at the present time to revise these rates.

Discussion and Ruling

The request to write general increases into the contract minimums is made in this case as is generally done in guild dispute cases. The argument that is regularly made is that, unless general increases are written into the contract minimums, the result will be the creation of intraplant inequities as between employees of equal experience. For instance, an employee who is within the wage brackets of the annual set-ups and who is on the payroll on the date when the general increase becomes effective will have his pay increased by the amount of the general increase, while an employee of equal experience who is hired subsequent to the date of the general increase may be hired at the contract minimum, in which case the two employees would be paid different rates for the same degree of experience. By this means, it is argued that a general increase, so far as the contract minimums are concerned, may be entirely lost during a period of rapid turnover of employees.

There is some merit in this argument, but the issue is not as simple as it appears and cannot be disposed of without considering the effect of writing a general increase into the minimums on the wage stabilization.

The Commission is regularly confronted with the question of when wages provided by a guild contract are stabilized. No satisfactory answer can be given to this question without a careful understanding of the wage clauses of a guild contract.

There are two pecularities of the guild wage clauses. First, the primary wage question that is determined through collective bargaining by the guild is the establishment of contract minimums on a yearly experience basis for a variety of job classifications. These contract minimums are "floors" below which an employee cannot be hired. They are not ordinarily actual rates, as an employee may be hired at a rate above the contract minimum for his degree of experience, a provision which differentiates the guild contract from other contracts.

It should be noted also that the contract minimums do not apply to all of the employees on a paper but only to those who are going through a training period represented by the annual step-ups. After an employee has reached the top provided for his job classification, he is then by the contract "on his own" so far as further increases are concerned.

The second peculiarity of the contract has to do with these individual merit increases just mentioned. The majority of guild contracts have a provision for individual bargaining for increases above the contract minimums. As a result of this provision many of the employees on a newspaper are paid salaries above the contract minimums. For instance on the *Herald-Tribune*, the case currently before the Commission, 51 out of 81 employees in the reporter classification are paid above the top contract minimum of $57.50. There are 60 out of the 81 who are paid above that minimum or the minimum for the year of experience of the employee involved. In fact, only 15 out of the 81 reporters are paid below the top

of $57.50 for the reporter classification.

To illustrate further what has been said, the contract minimum rates for reporters in New York and Philadelphia may be taken as concrete examples:

Length of Service	New York	Philadelphia
Inexperienced	$27.00	$27.00
After 1 year.....	37.50	32.50
After 2 years.....	47.50	38.00
After 3 years.....	57.50	44.00
After 4 years.....	....	49.00
After 5 years.....	....	59.00

It should be noted from these figures that the yearly step-ups vary from city to city. In New York a reporter reaches the top minimum after three years of experience, while in Philadelphia he does not reach the top minimum until after five years of experience, and it should be borne in mind that these figures are the "floors" and not the actual rates.

The contract minimums in a guild contract differ in this regard from the rates in a mechanical craft contract. The rates in mechanical craft contracts are actual rates paid.

As a result of these two peculiarities of the guild contract, the Commission is seldom dealing with actual wage rates. In New York the actual rates paid reporters vary from $27.00 per week for cub reporters to more than $300.00 per week for the top-notch reporters.

Under such conditions, what constitutes the "sound and tested going" rates? When are rates under these circumstances actually stabilized?

After much deliberation over this issue, the Commission's staff has reached the conclusion that there are two stabilization problems presented by guild contracts and that these two problems should be considered separately.

(a) When the Commission is dealing with the establishment of rate ranges for employees within the guild jurisdiction, it is concerned with actual rates paid. When the rate ranges in a market area, within which merit increases may be made, have been established on substantially a uniform basis for like job classifications, the Commission concludes that the actual rates within its jurisdiction, in contrast with rates that lie within the jurisdiction of the Treasury Department, have been stabilized.

(b) Likewise, when the contract minimums representing length-of-service schedules in a market area have been established on a substantially uniform basis, the contract minimums in that area are stabilized.

These conclusions are based upon the fact that the Commission is continually required to make these distinctions in the disposal of the cases presented to it. The conclusions are further supported by the fact that the establishment of contract minimums is the primary wage question settled through collective bargaining by the guild.

It is true that the guild bargains also for general increases. In practically every guild dispute case, however, the Commission has not written general increases into the contract minimums for the reasons cited above. The practice has been first to consider the merits of a demand for an adjustment of the contract minimums. A decision on this demand has been made on the basis of comparative rates for like job classifications on papers of like operations or in cities of substantially the same size or in the same labor market area as in New York City.

When the minimums have been thus adjusted, the Commission has measured the cost of this adjustment and has charged this cost as an offset against the Little Steel formula. If there still remains a portion of the maladjustment allowance unexpended, the Commission has then considered the granting of a general increase. This procedure enables the Commission to consider each question on its merits.

This whole issue has created a dilemma for the Commission. If a general increase is not written into the minimums, that fact may result in some intra-plant inequity as between employees of like experience. On the other hand, if a general increase is written into the contract minimums and unequal amounts are available on different papers in the some locality, as for instance was true in three New York dispute cases decided by the Commission, the level of contract minimums in that locality is disturbed. This disturbance of the contract minimums will be unstabilizing in that it will give one paper an advantage over other papers in the hiring of new em-

ployees and in the minimum rates required to be paid in the schedule of annual length-of-service increases.

This dilemma is inherent in the nature of the guild contract. In view of this dilemma, the Commission majority has deliberately chosen to keep separate the consideration of contract minimum rates and the granting of a general increase. When the contract minimum rates in a labor market like New York, where there are a number of competing newspapers, are substantially uniform and thus stabilized, the reasons for writing a general increase into minimums should be compelling. This is especially true if such action on a single paper would result in upsetting minimum rates that are otherwise stabilized.

The Commission majority, therefore, rules to deny the guild request for the adjustment of the minimums and approves only changes in those minimums that are set forth herein.

Classification	Present Minima	Guild Proposal	Management Proposal	Commission's Ruling
Home Institute Maid				
To start	$18.00	$22.00		
After 1 Yr.	20.00	25.00	Flat $20.00	Flat $20.00
Copy Boy				
Inex.	16.50	23.00	20.00	20.00
After 1 Yr.	19.00	25.00	21.00	21.00
After 2 Yrs.	22.00	26.00	22.00	22.00
After 3 Yrs.	....	27.00	....	24.00
Picture File Clerk; Telegraph, Cable Clerk; Teletype Attendant; Editorial Page Clerk				
Inex.	23.00	27.00	23.00	23.00
After 1 Yr.	25.00	28.00	25.00	25.00
After 2 Yrs.	27.00	30.00	27.00	27.00
After 3 Yrs.	....	32.50	29.50	29.00
Secretary				
Inex.	27.50	30.00	27.50	30.00
After 1 Yr.	30.00	32.50	30.00	32.50
After 2 Yrs.	32.50	34.50	32.50	34.50
After 3 Yrs.	35.50	37.50	35.00	37.50

3. General Increase

Union's Position

The guild requests that a general 15 per cent increase be given to all employees whose salaries are not increased by 15 per cent through the operation of its proposed minimums.

In support of this request the union states that the sum of $3.53 per week still remains allowable as a general increase under the terms of the Little Steel formula. The maladjustment computation is shown as follows:

Computation	Amount
Average straight-time weekly earnings Jan. 1, 1941	$56.54
15% of above	8.46
General Increase Oct. 13, 1942 (Arbitration award)	4.95
Allowable increase	3.53

The guild holds that the full amount of the Little Steel formula should be applied. It states that the national stabilization policy requires this, citing the majority opinion of the National War Labor Board in the Little Steel cases. (1 War Lab. Rep. 325.)

"There are special reasons why this general policy should be fully applied to white collar workers. Their straight-time wages generally constitute their full take-home pay. They have no guaranteed overtime * * * Their wage-earning position differs considerably from that of most industrial workers, who are employed for at least 48 hours per week and at premium rates for the excess hours." (Guild's rebuttal brief, pp. 17 and 18.)

Company's Position

As a counterproposal the company offered to give a general increase of 5 per cent to all employees earning less than $100 per week and whose salaries were not increased by 5 per cent as a result of changes in minimums. The company's arguments are outlined under the heading "Adjust-

ment of minimum salaries and writing in of past general increases."

Discussion and Ruling

The Commission finds the discussion of a general increase in this case complicated by the divergence of opinion between the parties as to the effect of the decision of the National Board in the original *Herald-Tribune* case (4302-CS-D). In its calculation of the amount now available under the maladjustment formula, the guild eliminates as offsets all increases granted after Jan. 1, 1941, except the increase ordered by the National Board in its decision of Feb. 27, 1943, effective Oct. 13, 1942. This calculation eliminates from consideration increases granted at each of the semi-annual surveys of July 2, 1941, Jan. 14, 1942, and July 22, 1942, when 10 per cent or more of the employees received an increase. The number and amount of these increases were as follows:

Date	No. Benefiting	Per Cent	No. on Payroll	Amt. of Increase
July 2, 1941	48	13.8	348	$211.00
Jan. 14, 1942	54	16.6	325	259.50
July 22, 1942	63	20.0	316	338.00

The publisher makes no specific claim as to these increases except to say that they were made for a variety of reasons. He presents these figures along with other increases granted since Jan. 1, 1941, for the information of the Commission.

The issue is further complicated by the fact that, prior to the first contract, all increases granted to these employees had been granted solely on an individual basis and no general increases in the sense of an across-the-board increase had been given. This fact complicates the determination of what increases shall be recognized as general increases and, therefore, as offsets. This complication was recognized by both the Board of Arbitration in the first *Herald-Tribune* dispute and by the National Board in its review of the Arbitrators' findings and in the Board's own decision.

Two alternative procedures are open to the Commission in dealing with the issue in the current case. First, to process the wage data de novo and make an award on the basis of its own calculations; second, to regard the calculations of the Board of Arbitrators as approved by the National Board as controlling of the action by the Commission.

Under the first alternative there are four possible interpretations that may be made.

(a) All increases granted since Jan. 1, 1941, except the increase made by the National Board in its decision of Feb 27, 1943, may be treated as merit increases, and, therefore, not allowed as offsets. This is the contention made by the guild. If this contention be accepted, the amount now available under the Little Steel formula for a general increase would be $3.53 per week per employee.

Computation	Rate
S.T.H.A., Jan. 1, 1941	$1.4135
15%	.21202
Offsets, Oct. 13, 1942	.1238
Still-allowable	.08822

or: $3 53 for a 40-hour week

(b) The second interpretation would include, as general increases, all increases granted on a single date to 10 per cent or more of the employees, in addition to the increases ordered by the National Board in its decision of Feb. 27, 1943. If this interpretation be accepted, then there would be $1.05 per week available as a general increase.

Date of Increase	Amt.	Amt.	Amt.
S.T.H.A., Jan. 1, 1941		$1.4135	
15%			$.21202
July 2, 1941	$.0151		
Jan. 14, 1942	.0199		
July 22, 1942	.0237		
Oct 13, 1942	.1238		.1855
			.02652

or: $1.06 for a 40-hour week

(c) Allowing the same percentage of the increases shown in interpretation (b) to be treated as general increases as the National Board recognized in its decision in the original case, this interpretation would show the following result:

Computation	Amt.	Amt.	Amt.
S.T.H.A., Jan. 1, 1941		$1.4135	
15%			$.21202
15/215 of $211 spread over 348 emp	$.01		
15/215 of $259 spread over 325 emp.	.014		
15/215 of $338 spread over 306 emp.	.018		
	.042		

Computation	Amt.	Amt.	Amt.
Oct. 13, 1942....	.1238		.1658
			.0462

This would show an allowable increase of $1.848 per employee per week.

(d) An interpretation following strictly the line of reasoning that was used in the disposition of the original case when it was before the National Board. The Board of Arbitrators found that 248 employees who were on the payroll Jan. 1, 1941, were still on the payroll at the time of the arbitration proceedings. Of this total number, 130 had had no increase while the 118 had had a 21½ per cent increase over their 1941 rate of pay. In interpreting the arbitrators' recommendation, the Board had this to say:

"The actual effect of this method was to divide the 21½ per cent average increase made to the 118 employees into a 15 per cent part which could be charged against the maladjustment formula and a 6½ per cent part which could be considered as individual merit increases and, therefore, not chargeable against the maladjustment formula under the Board's policy. Thus, of all the individual increases provided to the 118 employees, approximately two-thirds of the total was charged against the maladjustment formula, while one-third of the total was not charged.

"The arbitrators thus actually gave heavy weight to the newspaper's established practice of making practically all wage adjustments on an individual basis rather than in a form of general increases."

Applying the reasoning of this decision to the wage data in the case, the Commission finds the following results:

Computation	Amt.	Amt.
S.T.W. Ave. Jan. 1, 1944.. (Total Payroll for 348 Emp. $19,676.68)		$56.54
15%		8.48
Offsets Oct. 13, 1942 ..... ($1649.81 for 333 Emp.)		4.95
15% of the 21½% to the 118 Emp.		
15/215 of $1320—$920		
$920 -:- 333 =.....	2.76	
Total Offsets		7.71
Amount still allowable		.77

The Commission majority feels that it is bound by the interpretation placed upon the data by the National Board in the original *Herald-Tribune* Guild dispute case (4302-CS-D), and on this basis there would be 77 cents per employee per week available for a general increase.

In view of the fact that the Board policy favors the low-paid employees, the Commission majority makes the following ruling:

It finds 333 employees within the bargaining unit on the payroll as of the date of the hearing. Of this number, 102 are paid under $50.00 per week. The allowable amount available for a general increase is $256.00 per week. Spreading this amount over the 102 employees whose weekly salary is below $50.00, it would amount to $2.50 per week per employee.

The Commission majority votes to grant a general increase of $2.50 per week to all employees in the bargaining unit whose weekly salary on the effective date was less than $50.00 per week.

4. Wage Reopening Clause

Union's Position

The union proposes inclusion in the agreement of a clause to the effect that the contract is negotiated upon the basis of the present national stabilization policy and that the guild reserves the right to reopen the wage question at any time that the stabilization policy is amended or modified.

This is proposed in view of the fact that the National Board is presently holding hearings in the matter of possible upward revision of the Little Steel formula.

Company's Position

The company opposes inclusion of such a clause on the ground that it would tend to nullify the security granted by the contract—that, in effect, there would be no true contract between the parties.

Discussion and Ruling

The Commission finds that, because of the duration of the contract, the need for a reopening clause has not been made and, therefore, rules that this request be not granted.

5. Night Differential

Union's Position

The guild proposes inclusion in the contract of this clause:

"The minimum set forth herein shall be increased 10 per cent for all employees whose normal work schedule requires them to be on duty at any time between the hours of 6:00 p. m. and 6:00 a. m."

In support of this request the guild cites four main points.

1. Provision for night-shift differential is a common feature of union contracts in the newspaper industry and is included in agreements between the *Tribune* and the printers, pressmen, stereotypers, and photo-engravers' unions.

2. A large number of guild contracts with other papers throughout the United States contain similar clauses. The guild's Exhibit K, shown on p. 62 of the guild's rebuttal brief, is a list of night differentials provided for in guild contracts as of June 10, 1944. This list contains the names of 49 daily papers having agreements with the guild.

3. The *New York World-Telegram* contract provides for a night-shift differential which is the equivalent of 12.5 per cent of the day rate, in that it provides for 8 hours' pay for 7 hours' work at night.

4. On p. 43 of its rebuttal brief, the union cites cases decided by the Newspaper Commission in which it awarded night differential. It is the guild's contention that the granting of night differential is required by the Commission's policy, as evidenced by its past practice.

Company's Position

The management opposes the request for a night differential in the editorial department.

It is pointed out by the company that the large majority of editorial employees of any morning paper are required to work between 6:00 p. m. and 6:00 a. m. and that they know this when they accept employment. This situation is made necessary by the very fact of morning publication. The management contends that the awarding of a differential for night work under these circumstances would be most inequitable.

The company cites the Commission's action in the *New York Times* case where it denied the guild's request for night differential as controlling in this instance, in that it showed that the majority of the Commission believed that to grant the differential in that case would have had an unstabilizing and inequitable effect.

Discussion and Ruling

The question of a night differential on morning newspapers has been before the Commission in several dispute cases. The larger part of the work on morning newspapers has to be done during night hours, a fact that is known when an employee accepts employment. In addition, no morning daily paper in New York pays a night differential. In view of these facts, the Commission majority votes that the request of the guild be denied.

[Ed. Note: Issues D, wages—Parts (6) payment of salaries weekly in cash, and (7) dual classifications—, E, holiday provision, and F, consultation before discharge, discussed in the Commission's report at this point, are omitted.]

MELVILLE SHOE CORP.—

Decision of National Board

In re Melville Shoe Corporation [New York, N. Y.] *and* United Retail, Wholesale and Department Store Employees of America, Retail Shoe Salesmen of New York, Local 1268, and Retail Shoe Salesmen of Brooklyn and Queens, Local 287 (CIO). Case No. 111-6642-D, June 20, 1945 (made public July 28, 1945).

EMPLOYEES' BENEFITS—Paid sick leave—Industry and area practice

Regional Board's order directing company to grant 6 days' sick leave per year with full pay is vacated despite fact that such plan is prevailing practice in industry in area, since Board will not order sick leave plans in dispute cases in absence of one of two following "unusual" circumstances: (1) In cases where unusual health hazards might justify paid sick leave and (2) in cases where comparison of total benefits under other plans in operation at same company indicate inequity to employees involved in particular dispute.

Company which has liberal group health insurance plan for employees with one or more years of service should grant 3 days' sick leave to employees with 6 to 12 months' service in accordance with its counterpro-

posal to union's demand for 6 days' sick leave for all employees.

For other rulings see Index-Digest 49.800 in this or other volumes.

JOB PROTECTION—Guaranteed annual wage plan

Contract should provide guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees where such provision is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's petition for review of Regional Board's order directing such clause is denied.

For other rulings see Index-Digest 77.220 in this or other volumes.

ARBITRATION—Disputes under annual wage guarantee plan

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. Union claims that "to grant company right to arbitrate permanent layoffs if business conditions dictate would threaten security of workers", and provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.

For other rulings see Index-Digest 10.101 and 77.220 in this or other volumes.

JOB VACANCIES—Requirement for immediate replacements

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker, despite fact that such clause is in effect in 95 per cent of contracts which union has with other employers in industry in area. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.

For other rulings see Index-Digest 78.300 and 114.875 in this or other volumes.

Majority decision of Board amending decision of Regional Board II (New York). Opinion by Edwin E. Witte, public member. Public members concurring: Jesse Freidin and Lewis M. Gill. Public member dissenting with opinion on acceptance of company's petition for review of sick leave provision: Nathan P. Feinsinger. Employer members dissenting on grant of three days' sick leave and on denial of review of guaranteed wage plan: S. Bayard Colgate, Horace Horton, William Maloney, and Charles S. Roberts. Labor members dissenting on acceptance of company's petition for review of Regional Board's order on sick leave and job vacancies and on Board's vacation of such orders: Delmond Garst, Carl J. Shipley, Elmer E. Walker, and J. A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petitions for review filed by the parties to the above entitled case and having accepted, in so far as it relates to the ordered replacement clause and sick leave provisions, the petition filed by the company and having reviewed the merits of the case with respect to these issues, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Second Regional War Labor Board's interim directive order of Aug. 31, 1944, in this case shall govern the relations between the parties with the following modifications:

A. Replacement Clause

Sec. 3 of the said directive order of Aug. 31, 1944, is hereby vacated.

B. Sick Leave

Sec. 8 of the said order of Aug. 31, 1944, is vacated, and the following paragraph is substituted therefor:

"The company shall put into operation its offer to supplement its existing group health and insurance plan by granting full-time employees with more than six months but less than one year of service three days' sick leave with full pay during the year in cases of bona fide inability to work by reason of illness."

II. The remainder of the company's petition for review is denied.

III. The petition for review filed by the union is denied. Denial of that part of the petition which relates to military severance pay is without

prejudice to the right of the company to continue voluntarily its present military severance plan.

IV. Subject to the foregoing provisions, the terms and conditions of employment set forth in the Second Regional War Labor Board's interim directive order of Aug. 31, 1944, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Opinion of the Board

SICK LEAVE

WITTE, Public Member:—The fact that the National War Labor Board has found it necessary to vacate the part of the directive order of the Regional War Labor Board relating to sick leave and that this decision was reached by the narrow majority of seven to five renders it desirable that an explanation be given of this decision.

Sick leave was not a major issue in this case. The subject was dealt with only briefly in the panel report, and the Regional Board made no comments on this aspect of the case. It appears to have ordered the company to grant six days' sick leave a year to all regular full-time and part-time employees, largely on the unions' claim that such a provision occurs in the "printed standard form of collective bargaining agreement which virtually the entire retail shoe industry is observing." More specifically, the union claimed that 95 per cent of the independent and chain retail shoe stores in metropolitan New York have such a sick leave plan and that this includes "many, if not a majority, of the other retail chain stores which also provided group insurance."

The company, answering these claims, contended that modifications of the "printed standard form of collective bargaining agreement" have actually been made in the union contracts with many other firms. On the specific question of sick leave, it directed attention to the fact that, since 1927, it has had in operation a group health and life insurance plan which provides liberal sick leave, hospitalization, and other benefits. This plan is voluntary and contributory but provides sick leave benefits to all employees who have been with the company one year or more, greater than those which these employees would get under the Regional Board's order. Under the group insurance policy, the insurance company pays sick benefits only after a seven-day waiting period and on a part-wage basis. The company, however, voluntarily supplements the payments made by the insurance company to provide full pay from the date of the beginning of illness and for a period of three to seven weeks (varying with length of service), after which the part benefits of the insurance policy are payable up to a maximum total period of 13 weeks. Under the existing plan, an employee with three years' service (using a concrete illustration) who loses time from work by reason of sickness may draw full pay for eight weeks and part pay for five weeks more. In addition, employees can get hospitalization and surgical benefits not only for themselves but for their dependents as well, and the company's plan also provides for $1,500 to $10,000 of life insurance. During the hearings, the company offered to supplement its present plan by providing for three days' sick leave with full pay to employees with more than six months but less than one year of service. This offer, however, was not satisfactory to the unions, and the Regional Board allowed their demands in full. From the entire record, it is clear that what the unions want the company to do is not to substitute the six days of sick leave with full pay to all regular full-time and part-time workers for the existing company plan of group health and life insurance benefits but to keep this plan in operation and to provide in addition six days' sick leave at full pay to certain employees who do not get such benefits under the existing plan. These are the regular full-time employees who have been with the company less than one year and all regular part-time employees.

Statement of Fact

While no opinion explaining this decision was filed, the conclusion must be drawn from the directive order that the Regional Board held against the company on questions of fact on which its version differed from that of the union. As there is no conclusive proof to the contrary, it will be accepted as a statement of fact that the great majority of the independent and chain retail shoe stores in the metropolitan New York area have sick leave plans like those sought by the union. In the Board's discussion of the case, some members questioned whether the independent and chain retail shoe stores can properly be re-

garded as a separate industry or whether the practice of the industry in the area can be found only when retail establishments of all kinds are taken into consideration or, at least, the retail shoe stores plus the shoe departments in department stores which apparently were not considered in this connection. As the National Board has a definite policy that the determination of the industry and area is within the discretion of the Regional Board, to be set aside only on the clearest proof of arbitrary action, this doubt also must be resolved in favor of sustaining the directive order of the Regional Board. In the further discussion of the case, it is, hence, assumed that the sick leave plan was ordered on the ground stated in the union's briefs, namely, that it is generally prevalent in the independent and chain retail shoe stores in the metropolitan New York area. The question to be answered, consequently, becomes: "Did the Regional Board contravene National Board policy in ordering the Melville Shoe Corporation to grant six days' sick leave to all regular employees because this is the prevailing practice of the industry within the area, without taking into account that this company has a group health insurance plan in operation which long antedated the union's sick leave plan and for most of the employees is distinctly more liberal than the union's plan?"

Board Policy

This renders pertinent an examination of the decisions the National War Labor Board has made when it has had to pass on the question whether it should order an employer to institute a sick leave plan. Such an examination discloses that the Board has refused to direct employers to institute sick leave plans in all cases in which it has had to decide this issue. Such decisions were made in the following cases handled directly by the National Board: Los Angeles Railway Corporation, 3 War Lab. Rep. 565; Strand Baking Company, 5 War Lab. Rep. 262; Brew-Schneider, Inc., 10 War Lab. Rep. 1; Building Managers Association of Chicago, 11 War Lab. Rep. 88; Bethlehem Steel Co., 11 War Lab. Rep. 190; Basic Steel Cases, 19 War Lab. Rep. 568; Curtiss-Wright Corporation, 20 War Lab. Rep. 639; Big Four Meat Packing Companies, 21 War Lab. Rep. 652; John Morrell & Company, 21 War Lab. Rep. 730; Northern and Central California Pine Lumber Operators, 22 War Lab. Rep. 1; General Motors Corporation, 22 War Lab. Rep. 233; General Motors Corporation, 22 War Lab. Rep. 484; Aluminum Company of America, 22 War Lab. Rep. 680; Iron Ore Cases, 23 War Lab. Rep. 497; American Steel Foundries, 24 War Lab. Rep. 52; Douglas Aircraft Company, Inc., 25 War Lab. Rep. 57; and Curtiss-Wright Corporation, 25 War Lab. Rep. 83. In addition to these cases which it handled directly, the National Board reached the same conclusion in all cases in which it acted on petitions for review of directive orders of Regional Boards which directed employers in dispute cases to institute or liberalize sick leave plans. In Portland Traction Company, 13 War Lab. Rep. 138, the National Board upheld an order of a Regional Board refusing to direct establishment of a sick leave plan. In the following cases, it set aside orders of Regional Boards providing for the establishment of sick leave plans: Johns-Manville Company, Inc., 14 War Lab Rep. 266; Bay City Ice Cream Manufacturers, 18 War Lab. Rep. 453; Blue Bird Potato Chip Company, 20 War Lab. Rep. 18, and Swift and Company, 21 War Lab. Rep. 181. Regional Board orders for sick leave plans were also vacated in two other cases in which, however, the issue was referred back to the parties for further negotiations: Globe Mills, 23 War Lab. Rep. 10 and J. M. Service Corporation, 23 War Lab. Rep. 24 (in the former of these cases with a provision that the issue might be brought back to the National Board if the parties should be unable to agree). In no dispute case has the National Board ever directed an employer to institute a sick leave plan, while it has refused to do so in the long list of cases set forth in this paragraph *

The policy of the National Board was set forth in the Basic Steel cases (19 War Lab. Rep. 568 at 572):

"The Board will approve, under the wage stabilization program, reason-

* In discussions of this subject, the West Coast Airframe Companies case (6 War Lab. Rep. 581) has been cited as a case in which this Board ordered the liberalization of a sick leave plan. This claim is based on the fact that the Board's order provides for a liberalization of the "vacation and sick leave" plan of the North American Aviation Company. An examination of the case (see particularly p. 706), however, discloses that the "vacation and sick leave" plan in question was in fact a vacation plan with the peculiar provision that any days of sickness paid for by the company should be deducted from the 96 hours of directed vacation pay. This has no similarity to a genuine sick leave plan such as is involved in this case.

able sick leave plans agreed to by the company and the union, but it declines to order sick leave on the facts in these cases."

This precise language has been repeated in at least eight cases since decided and clearly states what is the Board's policy. It will approve sick leave plans voluntarily agreed upon but normally will not order the establishment or liberalization of a sick leave plan in a disputes case.

This does not mean that sick leave plans will never be ordered in a disputes case. While the National Board has never done so, the only two opinions which accompanied decisions on this issue both recognized that in unusual situations such an order is proper. This is implicit also in the language cited above, in which the Board phrased its order of denial in the Basic Steel cases. In Strand Baking Company, 5 War Lab. Rep. 262, the opinion of Dean (now Senator) Morse recognized that unusual health hazards might justify an order for the establishment or liberalization of a sick leave plan but concluded:

"In the absence of a clear showing that the nature of the employment is inherently such as to place an additional danger of sickness upon the employees, it would seem that the question of sick benefits is most properly one which should be agreed upon in collective bargaining."

In no other case is a direct statement made as to the conditions under which a sick leave plan is approvable. A test to be applied, however, is also suggested in the opinion accompanying the decision in the Portland Traction Company case, 13 War Lab. Rep. 138. This is that the total benefits provided under other plans in operation in the plant must be taken into consideration in passing upon proposals for the establishment of sick leave plans.

In this case, there are no unusual health hazards which would justify a departure from the general rule that the Board will not direct in a disputes case the establishment or liberalization of a sick leave plan. The test of other benefits provided, suggested in the Portland Traction Company opinion, leads to the same conclusion, as the company involved in this case has long had an unusually liberal sickness and hospitalization benefit plan which, moreover, it is willing to extend to some of the employees now excluded.

The only circumstances which anyone has suggested which justified a departure from the Board's normal policy in this case is that sick leave plans such as those ordered by the Regional Board are in operation in most of the establishments of the industry in the area. This precise question has not previously been passed on by the National Board. In a number of cases, however, it had before it the entire industry and yet refused to direct the establishment of sick leave plans as requested by the union (among others in the Basic Steel and Iron Ore cases). It clearly is not the Board's policy to direct the establishment or liberalization of a sick leave plan merely because such plan is in accord with the prevailing practice of the industry in the area, regardless of other considerations.

Contravention of Board Policy in Instant Case

Tested in the light of the prior Board decisions, it appears clear to the majority that the Regional Board contravened the National Board's policy in directing the Melville Shoe Corporation to grant six days' sick leave with full pay to all regular full-time and part-time employees. As has been stated, the Regional Board's order is sustainable only if the fact that the union's plan is in effect in the great majority of independent and chain retail shoe stores in metropolitan New York justifies a departure from the rule that the establishment or liberalization of sick leave plans will be directed in disputes cases only under unusual circumstances. As such a position has no support in prior Board decisions and ignores the fact that this company has in operation a liberal health benefit plan which long antedates the union's plan, it seems to the majority to be untenable. As this is the only basis on which the Regional Board's order can be sustained, it is the majority conclusion that this order contravenes the well-established National Board policy that sick leave plans will not be directed in a disputes cases except under unusual circumstances which would render it inequitable to fail to so direct.

The National Board, accordingly, has vacated this part of the directive order of the Regional Board. For it, it has substituted a provision that the company shall supplement its existing group health benefit plan by providing three days' sick leave to all employees with more than six months

and less than one year of service with the company. This liberalization of the company's existing plan is directed only because the company voluntarily offered this extension and has renewed this offer in its petition for review.

Dissenting Opinion of Public Member

SICK LEAVE PLAN

FEINSINGER, Public Member:—I respectfully dissent from the decision of the majority of the Board in this case which reversed an order of the Second Regional Board directing the company to conform its sick leave plan to the plan prevailing in 95 per cent of the industry in the area. The decision itself is questionable, in that it reverses the judgment of the Regional Board in a sphere ordinarily left to the discretion of the latter. This in itself would not merit a dissenting opinion. The chief basis for my dissent is that the rationale of the majority opinion, if accepted as a correct expression of Board policy, would create an exception to the Board's statutory duty in deciding labor disputes to provide for terms and conditions "which shall be fair and equitable to employer and employee under all the circumstances of the case." (War Labor Disputes Act of June 25, 1943, Sec. 7 (a) (2) [9 War Lab. Rep. XI.]).

In negotiations for a first contract, the union requested that regular full-time and regular part-time workers receive six working days' sick leave with full pay during the contract year. The company rejected the demand on the ground that it had already established a liberal group insurance plan supplemented by full pay from the beginning of illness for employees with one year or more of service. In its brief (p. 14) before the panel of the Regional Board, the company offered to liberalize this plan by granting three days' sick leave with pay to regular full-time workers with six months to a year of service. The company's proposed plan thus differed only slightly from the plan requested by the union. The tripartite panel of the Regional Board unanimously recommended granting the union's request. The majority of the Regional Board, industry dissenting, so ordered. On petition for review, the National Board, by a vote of seven to five, vacated the order of the Regional Board and adopted the company's proposal.

The majority opinion accepts as facts that independent and chain retail shoe stores in metropolitan New York constitute a separate industry for the purpose of determining industry-area practice; that the union has a standard form of contract covering 95 per cent of the stores in that area; and that this contract contains the sick leave plan requested by the union and directed by the Regional Board in this case. The union's statement that the contracts of "many, if not a majority" of the other chain stores provide for group health insurance in addition to sick leave is not challenged. Nevertheless, the order of the Regional Board has been set aside, on the basis of contravention of Board policy.

The following reasons for this action are set forth in the majority opinion: (1) Although voluntary agreements to establish or liberalize sick leave plans are approvable, the Board has previously declined to order or to liberalize sick leave plans in dispute cases of original jurisdiction or to sustain Regional Board orders granting, or to reverse Regional Board orders denying, sick leave plans in dispute cases; (2) Board policy precludes the granting or liberalizing of sick leave plans, even where the requested plan is in accord with industry or area practice, unless the circumstances are such as to make it inequitable to fail to direct such a plan; (3) While the conditions for granting or liberalizing sick leave plans in dispute cases have not been defined, the only two "tests" which have been specified in previous Board decisions are unusual danger of sickness incident to the particular employment and an appraisal of "total benefits" in the plant in question, neither of which tests is met in this case.

The majority approach seems to me to be based on a wrong construction of the Board's previous decisions in sick leave cases. Board orders denying requests for sick leave plans or modification thereof have been limited to cases in which the request was unsupported by industry or area practice or special circumstances in the particular case but was based solely on the claim that sick leave as such was a desirable industrial relations practice. On the other hand, in West Coast Airframe Cos., 6 War Lab. Rep. 581, at 706, the Board directed a modification of the agreement between the North American Aviation Co. and the UAW (CIO) containing, as in the instant case, a combined sick leave and vacation clause to con-

form to the plan incorporated in a contract between the same union and Vultee Aircraft, Inc. There was no element of special risk of sickness in the case. The obvious basis for the decision was the desirability from the standpoint of sound labor relations of uniform terms and conditions of employment in the airframe industry.* The Regional Board in the instant case appears to have proceeded with the same motivation, having in mind the extent to which standardization of contract provisions had already been achieved in the industry in the area by voluntary agreement. With or without the precedent referred to, the Regional Board, in making a fair and equitable determination of the dispute in the particular case, was clearly justified in following the pattern established through collective bargaining by 95 per cent of the industry. The precedent referred to lends affirmative support to the action of the Regional Board.

So far as the "total benefits" test may be applicable, the majority opinion fails to take note of the statement of the union that "many, if not a majority" of the other retail chain stores provided group insurance in addition to sick leave. It is therefore difficult to understand the statement in the majority opinion that the position of the Regional Board "ignores the fact that this company has in operation a liberal health benefit plan which long antedates the union's plan * * *." Furthermore, there is no finding that the company's proposed combined plan was more liberal than the combined plan in other stores. Again, if the "total benefits" test is to be applied, a comparison should be made of all benefits under the contract and not merely the benefits under a particular section. The majority opinion makes such comparison.

Finally, it should be noted that the company, contrary to the position of the employer in the typical case heretofore considered by the Board, was not opposed to a sick leave plan as such or to a modification of its existing plan but was opposed only to the particular form and degree of modification proposed by the union; further, that the net difference between the two proposals was very slight. The narrow question presented to the Regional Board in this case, therefore, was whether the selection of one rather than the other of the two slightly varying proposals was a fair and equitable determination of the dispute under all the circumstances of the case. I cannot agree that the Regional Board was not competent to pass upon that question or that its determination violated any established Board policy.

In summary, I do not believe that the majority opinion correctly reflects Board policy on the issue of sick leave or that the reasons advanced in the opinion justify the Board's action in this case.

* A footnote in the majority opinion seeks to distinguish the case referred to on the ground that it involved primarily a vacation plan. However, the sick leave provision was clearly an integral part of the plan. See 6 War Lab. Rep. 581, p. 706-7, setting forth the plan in full, headed "Vacations and Sick Leave."

Interim Directive Order of Regional Board II (New York)

Aug. 31, 1944

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides certain of the issues in dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Closed Shop

The request of the unions for a closed shop is denied.

The union is awarded the standard maintenance-of-membership provision as adopted by the National War Labor Board on Nov. 27, 1943, which adapted to this case, is hereto made part of this interim directive order [12 War Lab. Rep. XXVIII; WCDS 321].*

2. Discharge Clause

The request of the union that an employee shall be discharged only after arbitration, except in cases of alleged dishonesty, is denied.

The company shall retain the right of discharge of any employee for good and sufficient cause. No employee shall be discharged capriciously or without reasonable cause.

The unions shall have the right to question the propriety of any discharge. If, within one week of a discharge, the parties have not reached

* Ed. Note: The adapted copy is not reproduced.

an agreement on the properiety or lack of propriety of a discharge, the matter, at the request of the union, shall be submitted to arbitration, as provided in the contract between the parties. In the event that the arbitrator decides that an employee has been wrongfully discharged, the employee shall be reinstated to his former position with full pay for the period of his wrongful discharge.

3. Replacement Clause

Where a position occupied by a regular full-time or regular part-time worker shall become temporarily or permanently vacant due to resignation, death, discharge, or incapacity, or any other cause whatsoever, the place of such worker shall be forthwith filled by the company with another worker. If undue hardship upon the company would result from the application of this provision, the company shall have the right to request that the matter be submitted to arbitration as provided in the contract between the parties.

The unions shall be the sole judges of the good standing of their members and, upon written notice by the unions to the company that an employee is not a member in good standing with one of the unions, such employee shall forthwith be discharged.

4. 52-Week Guarantee Clause

Regular full-time employees shall be guaranteed 44 hours of work per week for 52 consecutive weeks per year.

Regular part-time employees shall be guaranteed employment for 5 nights and a Saturday weekly for 52 consecutive weeks per year.

The foregoing provisions shall not be subject to arbitration.

5. Wages

(a) The request of the company for wage-progression schedule for apprentices or inexperienced employees and for a wage differential for saleswomen 15 per cent below the rate paid to male sales clerks is denied.

(b) The company shall pay the following rates for the classifications set forth below:

(1) Managers employed in White Front Stores shall receive a minimum weekly rate of $48 provided all those presently earning $45 per week or more shall receive an increase of $3 a week.

(2) Managers employed in Gold Line Stores shall receive a minimum weekly rate of $55 provided all those presently earning $52 per week or more shall receive an increase of $3 a week.

(3) Assistant managers employed in White Front Stores shall receive a minimum weekly rate of $38.50 provided all those presently earning $35.50 per week or more shall receive an increase of $3 a week.

(4) Assistant managers employed in Gold Line Stores shall receive a minimum weekly rate of $46 provided that all those presently earning $43 per week or more shall receive an increase of $3 a week.

(5) Full-time shoe salesmen employed in White Front Stores shall receive a minimum weekly rate of $36 provided that all those presently earning $33 per week or more shall receive an increase of $3 a week.

(6) Full-time shoe salesmen employed in Gold Line Stores shall receive a minimum weekly rate of $38.50 provided that all those presently earning $35.50 per week or more shall receive an increase of $3 a week.

(7) Part-time shoe salesmen employed in White Front Stores shall receive a minimum weekly rate of $21.

(8) Part-time shoe salesmen employed in Gold Line Stores shall receive a minimum weekly rate of $22.

(9) Part-time shoe salesmen employed in White Front Stores shall receive a minimum daily rate of $6.50.

(10) Part-time shoe salesmen employed in Gold Line Stores shall receive a minimum daily rate of $7.

(11) Part-time shoe salesmen employed in White Front Stores shall receive a minimum nightly wage of $3.25 for four hours of work.

(12) Part-time shoe salesmen employed in Gold Line Stores shall receive a minimum nightly wage of $3.50 for four hours of work.

(13) Full-time cashiers and porters shall receive a minimum weekly rate of $25 provided that all those presently earning $23 per week or more shall receive a weekly increase of $2.

(14) Full-time hosiery and bag saleswomen shall receive a minimum weekly rate of $22 provided that all those presently earning $22 per week or more shall receive a weekly increase of $2.

(15) Part-time cashiers and porters shall receive a minimum daily rate of $5.

(16) Part-time cashiers and porters shall receive a minimum nightly wage of $2.50 for four hours of work.

(17) Part-time hosiery and bag saleswomen shall receive a minimum daily rate of $4.50.

(18) Part-time hosiery and bag saleswomen shall receive a minimum nightly wage of $2.25 for 4 hours of work.

The balance of the agreement of the parties as to wages as set forth in Art, 8, Secs. s, t, u, v, w, and x of their proposed contract filed in the above case is hereby approved.

6. Religious Holidays

The parties shall negotiate as to the granting of religious holidays and report the outcome of their negotiations to this Board within 30 days of the date of issuance of this interim directive order.

7. Vacations

The company shall grant annual vacations with pay to its employees as follows:

Regular full-time employees and regular part-time employees shall receive two weeks' vacation with pay including avarage commission, (computed as to regular part-time employees as provided in Art. X, Subdivision (b) of the proposed contract between the parties) if such employees are employed for one year or more prior to Aug. 31.

In accordance with the agreement of the parties, if any holidays provided in Art. IX of the proposed agreement between the parties occur during an employee's vacation period, such employee's vacation period shall be increased with full pay to include an equivalent number of days to make up such holidays.

All other requests of the unions and the company pertaining to vacations are denied.

8. Sick Leave

The company shall grant to regular full-time and regular part-time employees six working days' sick leave with full pay during the year.

9. Commencement and Expiration Dates of Agreement

The inception date of the contract between the parties shall be the date of issuance of this interim directive order and shall continue for a term of one year therefrom.

The request of the unions that either party shall have the right to reopen the wage and minimum wage provisions six months prior to the expiration date of the agreement between the parties is denied.

10. Wage Reopening

In the event that there is a substantial change in the national wage stabilization policy, either party may renegotiate wage rates by giving 30 days' notice in writing to the other party.

11. Retroactivity

Wage adjustments resulting from the provisions of this interim directive order shall be retroactive to Feb. 21, 1944.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree, provided that the 15-day period referred to in the maintenance-of-membership provision shall be deemed to run from the date of this order. The remaining issues in dispute between the parties will be determined by the Board at a later date.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately operative.

Signed by John W. McConnell and Paul F. Brissenden, public members; Edward Stewart and William Geff, labor members, subject to dissent on minimum rates for hosiery and bag saleswomen, retroactivity, holidays, and denial of one week's vacation after six months' service;

and Joseph W. Zeller and John A. Zellers, labor members, subject to dissent on jurisdiction, closed shop, replacement clause, 52-week guarantee, apprentice rates, differential between men and women, and sick leave; Mr. John A. Zellers also subject to dissent on addition of standard reopening clause and commencement and expiration date of contract.

Opinion of the Board

Oct. 16, 1944

STANDARD CONTRACT PROVISION

McCONNELL, Public Member:—The Melville Shoe Corporation operates a chain of retail shoe stores under the trading name of Thom McAn. On Dec. 10, 1942, the New York State Labor Relations Board certified the Retail Shoe Employees Union, Locals 287 and 1268, as the collective bargaining agent for the employees of the 88 Thom McAn stores in New York City and Nassau, Suffolk, and Westchester Counties. Negotiations for a contract between the company and the unions continued from December 1942 until the issues still in dispute were certified to the National War Labor Board on Feb. 21, 1944. Throughout the negotiations, the union demanded that the company accept the standard contract which the unions had concluded with all other retail shoe stores within their jurisdiction. 95 per cent of the retail shoe stores (chain and independent) in the area operate under the union's standard contract including a union-shop provision. It is this fact which gives the instant case unusual significance and requires the writing of this opinion.

It is well to note, in passing, that the company claimed that the National War Labor Board lacked jurisdiction in this case because of the intrastate nature of the business as well as its lack of importance to the war effort. On that account, the company attended the hearings under protest and without in any way prejudicing its rights to press the issue of jurisdiction. However, the panel recommended and the Regional Board affirmed that the issue of jurisdiction was a matter upon which the National War Labor Board alone could rule, and in fact it had already ruled in its original acceptance of the case upon certification by the Department of Labor and its referral of the case to the Second Regional Board.

In the course of more than a year of negotiations, the parties reached agreement on the major portion of the contract, including a wage schedule. The union, however, insisted that the company accept the standard contract in its entirety with only those minor variations made necessary by peculiar circumstances of the employer's business. As a consequence, the issues referred to the War Labor Board represented the most significant parts of the standard contract, such as closed shop; arbitration of discharges prior to the effective date of discharge, except in cases of alleged dishonesty; compulsory replacement for all vacancies; guarantee of 52 weeks of work per year; a 44-hour workweek for managers; six standard and two religious holidays; two weeks' vacation for a year of service; six days' sick leave; and military severance bonus.

The Regional War Labor Board took the position in this case that industrial harmony and stabilization would be fostered in this industry if the same conditions of employment were extended to the Tom McAn stores as apply in 90 per cent to 95 per cent of the retail shoe stores (chain and independent) in the New York metropolitan area. Therefore, except where strong and compelling reasons have warranted some other action, the Regional Board, following the unanimous recommendations of the panel, has directed the parties to observe the provisions of the standard contract. The Board substituted a maintenance-of-membership clause for the closed shop demanded by the union. It likewise directed that discharges be arbitrated after, not prior to, the actual discharge, and it has directed the parties to negotiate a provision defining the workweek for managers in somewhat more flexible terms than the original union demands. On these latter issues, it was found that the unions had agreed to modifications in the standard contract negotiated with other employers. The Regional Board, in line with well established National Board policy,* refused to order the military severance bonus incorporated in the contract although the employer had already established a bonus equivalent to the union's demand. On the remaining issues, however, the Board supported the union's demand for the provisions of the standard contract even though

some of the provisions requested are seldom ordered by the War Labor Board. To have ordered less than the standard contract provision would have led to demands by other employers for the preferential position enjoyed by the Thom McAn stores, thus introducing dissatisfactions and encouraging new conflicts in the industry.

RETROACTIVITY

Finally, on the issue of retroactivity, the panel recommended and the Board directed Feb. 21, 1944, as the retroactive date. This was the date of certification of the dispute to the War Labor Board. Since no prior contract existed, the date of certification is the only date which the Board will direct, save in exceptional circumstances. It was argued that, in view of the long period intervening between the start of negotiations and the date of certification, a compromise date more favorable to the union should have been recommended by the panel and directed by the Board. However, it was the union's prerogative to hasten the certification of the case to the War Labor Board if it was so minded. That it delayed doing so is not sufficient reason to deviate from Board policy.

Report and Recommendations of the Panel

June 26, 1944

PARTIES TO THE DISPUTE

The company operates 88 Thom McAn Shoe Stores in the counties of New York, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, and Westchester—all in New York State. This embraces the Thom McAn White Front Stores and the Thom McAn Gold Line Stores. All the White Front Stores carry men's shoes. All the Gold Line Stores carry women's shoes. Some White Front Stores also carry boys' and girls' shoes.

The unions are chartered by the United Retail, Wholesale, and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, and are devoted to the interests of persons, among others, engaged in the sale of shoes, hosiery, bags, and similar or other accessories related thereto.

BACKGROUND

On Dec. 10, 1942, after an election conducted by it, the New York State Labor Relations Board certified the unions as the exclusive collective bargaining representative for all the company's managers, assistant managers, shoe salesmen, cashiers, porters, store stock boys, wrappers, and hosiery and bag saleswomen employed in the company's Thom McAn Stores in New York City and Nassau, Suffolk, and Westchester Counties. From the said date of certification to about Nov. 30, 1943, a number of negotiations in collective bargaining did not result in a collective bargaining agreement. Thereafter the parties met with Commissioner Frank E. Walsh of the United States Conciliation Service in further negotiations, but no collective agreements resulted therefrom.

The United States Conciliation Service certified this case to the National War Labor Board on Feb. 21, 1944, which, in turn, duly referred it to the Regional War Labor Board.

There has never been any collective bargaining agreement between the company and the unions.

These 88 retail stores employ approximately 325 workers within the categories herein before outlined.

After the first hearing conducted by the panel, the panel directed, in view of the numerous matters in dispute, that the parties negotiate further in an effort to arrive at an amicable agreement on as many controverted issues as possible. The parties did so and continued to do so after the final hearing, and they finally reached an agreement with respect to many of the controverted matters, but some serious issues are still in dispute.

Preliminary Issue of Jurisdiction

The company has appeared in this proceeding in the nature of a special appearance contesting the exercise of jurisdiction by the panel and the Board and reserving its right to press the jurisdictional objection at all stages of the proceedings—contending that its submission of comments and its participation at the hearings shall in no way be regarded as a waiver of any of its rights to contest the assumption of jurisdiction by the panel and the Board.

* American Brake & Shoe Foundry Co., Case No. 111-1490-D [17 War Lab. Rep. 23], opinion for the public members by Edwin E. Witte.

The company contends, on this issue, that it is an intrastate employer, that the stores involved are not engaged in war production, that the dispute does not threaten any interference with the war effort, and, further, that a change in circumstances since Nov. 12, 1942 (when New York State Labor Relations Board conducted the election), warrants the belief that the unions have lost their majority and, therefore, there must be a new determination of the representation issue.

The unions contend, on this issue, that the company's special appearance "is without weight or significance" because the company's objection to jurisdiction was overruled (1) by the United States Conciliation Service when it certified this case to the National War Labor Board, (2) by the National War Labor Board by assuming and continuing its jurisdiction and referring it to the Regional War Labor Board, and (3) by the Regional War Labor Board and its New Case Committee overruling the company's motion to dismiss this case for lack of jurisdiction (see affidavit and notice of motion, dated Mar. 16, 1944—this case number), and that the question of jurisdiction is not within the scope of the panel's authority.

Unions' Standard Agreement

The unions have a printed standard form collective bargaining agreement in universal use in the retail shoe industry. The unions allege that all the independent and chain retail shoe stores under contractual relations with the unions are parties to agreements containing the identical provisions found in the standard form agreement, with perhaps occasional slight changes in phraseology but not in substance; that the unions have collective bargaining agreements with 95 per cent of the independent and chain retail shoe stores in metropolitan New York; and that virtually the entire retail shoe industry is operating under the provisions of the unions' standard form collective bargaining agreement.

The unions' standard form collective bargaining agreement was used as the basis for the negotiation between the company and the unions, and the unions, in "insisting upon the provisions contained in their standard form collective agreement, are merely asking that the employer (the company) be compelled to observe those working conditions which virtually the entire industry is observing."

However, and as aforestated, since the commencement of the hearing before the panel, the parties have compromised upon many disputed issues.

Annexed to the unions' brief (prepared and submitted after the hearings and the negotiations for settlement which followed) is the unions' proposed collective bargaining agreement with respect to which the unions state (p. 7 of brief):

"Such proposed agreement is based upon the unions' standard form collective bargaining agreement in universal use in the retail shoe industry, modified to indicate the provisions compromised and agreed upon by the parties and further modified to indicate a compromise with respect to disputed provisions which the unions are willing to make for the sake of establishing good will between the parties. The provisions of such proposed agreement which the parties have agreed upon are indicated by the word 'agreed'; the provisions of such proposed agreement which are still in dispute between the parties are indicated by the word 'disputed.'"

Order on Entire Agreement

The unions state (p. 5 of brief):

"The employer's special appearance necessitates, however, that the panel's recommendation, with respect to a directive order, apply to the entire collective bargaining agreement to be signed by the parties for, although the employer has agreed upon many of the provisions to be inserted in such collective bargaining agreement, it has not stated whether or not it will sign a collective bargaining agreement containing the provisions directed to be inserted therein by the Board, as well as the provisions agreed upon by the parties. In other words, the employer's special appearance necessitates a directive order directing the employer and the unions to execute a collective bargaining agreement containing the provisions agreed upon by the parties and the provisions directed to be inserted therein by the Board."

The company states (pp. 9 and 10 of memorandum):

"However, if the panel should recommend the assumption of jurisdiction, it will be necessary to set forth in a directive order the determinations on the disputed issues as well as the matters agreed upon by the parties, as if they had been determined by the panel

because of the unions' refusal to sign an agreement incorporating only the matters agreed upon by the parties."

ISSUES

[The parties are in dispute as to nine articles of the unions' proposed collective bargaining agreement. The articles comprise the following issues: *

Closed shop and union status;

Discharge and replacement;

52-hour week employment guarantee;

Hours of work for managers;

Apprentice rates;

Retroactivity;

Holidays;

Vacations and sick leave;

Military bonus;

Commencement and expiration date of contract; and

Wage increases.]

Closed Shop and Union Status

Unions' Contentions

The unions contend that 95 per cent of the independent and retail chain stores in the metropolitan New York area have collective bargaining agreements with the unions containing the identical closed-shop provisions which the unions seek with this company; that the company has shown an anti-union attitude; that the unions are responsible and democratic trade unions; and that a closed shop will benefit the labor-management relationship between the parties.

Company's Contention

The company contends that ordering a closed shop is contrary to the announced national policy and is repugnant to the principles of freedom of the employees to join or not to join a labor organization, and the closed shop tends to create a labor monopoly; that the union's bare majority (179 against 145 at the election before the State Labor Board in November 1942) has since been lost; and that to grant a closed shop in the circumstances existing in the instant case would constitute a glaring example of a compulsory rule by the minority (citing cases pp. 13 to 16 of memorandum).

Discharge and Replacement Clauses

Unions' Contentions

Discharge: Unions contend that a worker shall be discharged following arbitration only, except in a case of a discharge for alleged dishonesty, in which event the worker may be discharged subject to his right to arbitration after the discharge and to his right to reinstatement with back pay if he was wrongfully discharged.

Replacement: The unions contend that the company be required to fill the position of a regular full-time or regular part-time worker which has become vacant and, to meet any objection upon the part of the company, the unions have consented that the standard provisions be modified to give this company the right to resort to arbitration if the strict application of these provisions result, in any particular situation, in any undue hardship upon the company; and (on the unions being sole judge of good standing of its members) that such a provision is necessary under a closed-shop agreement and likewise necessary under a union-shop or maintenance-of-membership agreement.

Company's Contentions

Discharge: The company contends that the clause proposed by the unions is utterly unreasonable and dangerous to the successful operation of the company's business; that the company should retain its right to discharge any worker for reasonable cause subject to the right of the worker to arbitration after such discharge.

Replacement: The company contends that the company should not be required to maintain the same complement of salesmen irrespective of a substantial curtailment in the volume of its business—a difficulty not cured by the unions' suggested arbitration; and that the company should not be required to hire or retain workers for whom it has no work or use.

52-Week Guarantee Without Right of Layoff

Union's Contentions

The unions contend that the guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and 5 nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time work-

* Ed. Note: The full text of the unions' proposed agreement is annexed to the "Unions' Brief," and the issues in dispute are discussed by the unions in the "Unions' Brief," pp. 8-31. The issues are discussed by the company in the "Company's Memorandum," pp. 10-34.

ers shall not be subject to arbitration (the company merely objecting to provisions forbidding arbitration); that to grant to this company the right to arbitrate permanent layoffs if the business conditions dictate such course would threaten the security of the workers; that such provisions "are the backbone of the agreement"; and that, under Art. V, Subdivision (d) (the replacement clause), the unions are willing to permit the company to arbitrate replacements of vacancies where undue hardships result upon the company.

Company's Contentions

The company contends that it is unalterably opposed to the provisions of Art. V, Subdivision a and b, providing for a 52-week guarantee; that it does not object to providing 52 weeks of work for all regular workers retained in its employ; that its established policy is to provide these workers with 52 weeks a year, save those workers released through store closing; that a provision of guaranteed employment is contrary to the well-established policies of the Board (citing cases, p. 20-21 of memorandum); and that all of the arguments outlined in opposition to the replacement clause (aforementioned) apply with equal force to the prohibition against permanent layoffs.

Hours of Work for Managers

Unions' Contentions

The unions strenuously object to the insertion of a new provision in the agreement for a 48-hour workweek for the company's managers, and they (the unions) insist that the managers work a 44-hour week, which is provided for the other full-time workers; that the company negotiated and agreed upon wages with the unions upon the basis of a 44-hour workweek for its Gold Line and White Front managers; that the company is presently, and for several years past has been, working its managers on a 45- or 46-hour workweek; and that to grant a 48-hour workweek would require a reopening of the agreed upon wages for managers.

Company's Contentions

The company contends that an exception should be provided for managers under the 44-hour workweek so that managers may work a regular workweek of 48 hours; that managers, being charged with full responsibility for store operations including stock, cash, check-up, etc., should be granted this exception—an exception long recognized and practiced in other forms of chain operations.

Certain Wage Provisions—Apprentice Rates

Unions' Contentions

The unions object to the company's proposed provision for apprentice rates for new or inexperienced shoe salesmen or for a differential in wages between those paid to shoe salesmen and those paid to shoe saleswomen; that such provisions and differentials do not exist in the shoe industry and their introduction would have serious repercussions in the industry; that this company should not be placed in a more favorable competitive position by reason of such provisions; and that the quality and quantity of work performed by shoe saleswomen are equal to the quality and quantity of work performed by shoe salesmen.

Company's Contentions

The company contends that it has always maintained a policy of hiring inexperienced people, training them in the art of shoe selling and company method and practices and, accordingly, has paid these new inexperienced employees an apprentice rate; that it cannot reasonably be expected that the wage rates to be paid to inexperienced people be similar to the rates paid to experienced shoe salesmen; that the company submits a modified apprentice salary progression schedule (see pp. 24 and 25 of its memorandum); that the company also requests a differential for wages for women sales clerks of 15 per cent below the rates paid to male sales-clerks—based not on sex inequality, but founded solely on the quantity and quality of work performed by female employees as compared with male employees.

Retroactive Date

Unions' Contentions

The unions contend that the wage provisions of the agreement be made retroactive to Dec. 10, 1942, the date when the unions were certified by the New York State Labor Relations Board as the exclusive bargaining representative for the company's workers.

Company's Contentions

The company contends that the unions delayed negotiations because of their attitude of "closed shop or

nothing" and their watchful waiting for a "better break" in the Board's wage policy; that, in conformity with the realities of the situation, the retroactive date should be fixed at May 1, 1944, which was the date when the parties agreed upon wage rates; and that, under the War Labor Board policy, the retroactive date cannot precede the date of certification by the U. S. Conciliation Service.

Holidays

Unions' Contentions

The unions request that the company grant to full-time and regular part-time workers, irrespective of their faith, two religious holidays in each year with pay.

Company's Contentions

The company proposes to grant the first day of Rosh Hashonah and the Yom Kippur holiday to workers of the Jewish faith and, as far as the non-Jewish workers are concerned, there is no restriction against work on Good Friday—thus the requirements of the religious faiths are met.

Vacations and Sick Leave

Unions' Contentions

Vacation: The unions contend that regular full-time workers and regular part-time workers should be granted two weeks' vacation with full pay, including average commissions, if they are employed one year or more prior to Aug. 31, and one week's vacation with full pay, including average commission, if they are employed six months or more prior to Aug. 31; that these are standard provisions in the industry, and have been for several years.

Sick leave: The unions contend that regular full-time and regular part-time workers should be granted six working days' sick leave with full pay during each year as obtains in many, if not the majority, of [the] other retail chain stores which also provide group insurance.

Company's Contentions

Vacations: The company proposes to grant a vacation of two weeks only to regular workers with two or more years of service prior to July 1.

Sick leave: The company opposes the granting of six days' leave because of the existence of liberal sick leave, hospitalization, and other benefits under its "group health insurance plan;" that, as to regular full-time workers with more than six months' to less than one year's service who are not eligible under the group plan, the company will grant to such workers three-days' sick leave with pay for actual bona fide illness.

Military Bonus

Unions' Contentions

The unions request that the company be required to pay to its conscripted workers two weeks' pay plus their accrued vacation pay upon entering the United States armed forces.

Company's Contentions

That the company has adopted a military pay policy as a voluntary matter and is therefore opposed to having any policy on military pay written into the contract and contends that said payments "should be a matter left to the free will of the employer and not the result of Government compulsion."

Commencement and Expiration Date of Contract

Both parties are in agreement that the term of the agreement shall be for one year, but they leave to the Board the determination of the date of commencement thereof. The unions, however, seek a provision giving either party the right to reopen the wage and minimum wage provisions six months prior to the expiration date of the agreement, a provision which the company opposes. (p. 30 of unions' brief).

Wages and Wage Increases

The parties are in complete agreement on wages, wage rates, and wage increases, excepting such modification, if any, which may arise on the basis of the company's proposals for a 48-hour workweek for managers and for wage rates for apprentice workers, as aforementioned.*

With respect to the said wages and minimum wage rates, the unions state, (pp. 22 and 23 of its memorandum)—and [are] not controverted by the company, that:

"The wage and minimum wage rates agreed upon between the parties will be found to be within the sound and tested going rates prevailing in the industry in the area. While the

* See Art. VIII, Subdivision (a) to (x) inclusive of proposed collective agreement annexed to unions' brief; also letter dated May 27, 1944, by Markewich, Rosenbaus & Markewich, Esqs., attorneys for the unions to Isaac Seigmeister, Esq., chairman of the panel, and the schedule of current weekly base salaries of all regular full-time workers involved in the agreement, schedule of rate of commission, p.m.s., and incentive earnings of various categories of regular full-time workers.

Board has not yet published any sound and tested going rates in the industry in the area, it has been operating under rates which justify the rates agreed upon between the parties.

"Reference can be made to the Regional Board's decision dated Dec. 30, 1943, in A. S. Beck Shoe Corporation and Retail Shoe Employees Union, Local 1268 and Retail Shoe Employees Union, Local 287, Case No. 2-20417, and, similarly, reference can be made to the Regional Board's decisions in other cases which approve wage rates and minimum wage rates at least equal to, if not in excess of, those agreed upon herein under comparable situations in the same industry in the same area."

RECOMMENDATIONS

The panel respectfully recommends [as follows:]

Jurisdiction

The issue of jurisdiction having been heretofore disposed of by the Regional Board by its denial of the company's motion to dismiss this proceeding for alleged lack of jurisdiction, as aforesaid, and thereafter by its reference to this panel to hear and determine all the issues involved herein and to report accordingly, the said ruling on the issue of jurisdiction is, in the opinion of the panel, conclusive upon the panel.

Closed Shop and Unions' Status

That the request of the unions for a closed shop should be denied and that a proper maintenance-of-membership clause should be substituted in lieu of the closed-shop clause.

Discharge Clause

That the employer retains the right to discharge any employee for good and sufficient cause; that the unions shall have the right to take up the question as to whether or not the discharge was just and proper; that if, within one week of such discharge, the parties are unable to agree, the matter may, at the request of the unions, be submitted to arbitration as herein provided; and that no worker shall be discharged capriciously or without reasonable cause, nor shall he be discharged for union activities; and that, in the event that the arbitrator decides that such worker was wrongfully discharged, such worker shall be reinstated to his former position with full back pay for the period he was so wrongfully discharged.

Replacement Clause

That the unions' request, as set forth in Art. V, Subdivision (d) and (e) of its proposed collective bargaining agreement, should be granted.

52-Week Guarantee Clause

That the unions' request, as set forth in Art. VI, Subdivision (a) and (b) of its proposed collective bargaining agreement, should be granted.

Hours of Work for Managers

That the company's request that an exception should be provided so that managers may work a regular workweek of 48 hours instead of 44 hours should be denied and that the unions' request for a 44-hour workweek, as set forth in Art. VII of its proposed collective bargaining agreement, should be granted.

Wage Provisions

That the company's request for a wage progression schedule for apprentice or inexperienced workers and for a wage differential for saleswomen of 15 per cent below the rate paid to male salesclerks should be denied and that the joint request of the company and the unions as to wages, as set forth in Art. VIII, Subdivision (a) to (x), inclusive, should be granted. (See issue, "Wages and Wage Increases.")

Retroactive Date

That the wage provisions of the proposed collective bargaining agreement should be made retroactive to Feb. 21, 1944, the date of the certification by the U. S. Conciliation Service.

Holidays

That the issue of "religious holidays" (Art. IX, subdivision (b)) should be referred to the parties for further negotiation and adjustment.

Vacations

That regular full-time workers and regular part-time workers should be granted two weeks' vacation with full pay, including average commissions (computed, as to regular part-time workers, as provided in Art. X, Subdivision (b)) if they are employed for one year or more prior to Aug. 31 and that any other proposals by the unions or counterproposal by the company (as to vacations) should be denied (except as to holidays which occur during vacation period [Art. X, Subdivision d]) which should be granted.

Sick Leave

That regular full-time and regular part-time workers should be granted six working days' sick leave with full pay during the year.

Military Bonus

That the company be required to pay to its conscripted workers two weeks' pay plus accrued vacation pay upon entering the United States armed forces as set forth in Art. XXII, Subdivision (b), of the proposed collective bargaining agreement.

Commencement and Expiration Dates

That the agreement shall begin as of the date of the directive order herein by the Regional Board and continue for a term of one year therefrom and that the request of the unions (Art. XIX of the proposed collective bargaining agreement) for a provision giving either party the right to reopen the wage and minimum wage provisions six months prior to the expiration of the said agreement should be denied.

That the unions and the company should be required to enter into a collective bargaining agreement containing provisions, as to the disputed issues above enumerated, as hereinabove indicated and also the provisions set forth in the articles of the proposed collective bargaining agreement marked in the margin thereof "agreed."

Signed by Isaac Siegmeister, representing the public; Henry Mueller, representing employers; and Paul Krebs, representing labor.

LION OIL REFINING CO.—

Decision of National Board

In re LION OIL REFINING COMPANY [Eldorado, Ark.] *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 381 (AFL). Case No. 111-12051-D, May 22, 1945 (made public Aug. 1, 1945).

DISCHARGE AND REINSTATEMENT —Disciplinary discharge — Reinstatement on Board order — Assessment of responsibility

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.

For other rulings see Index-Digest 46.213 and 46.425 in this or other volumes.

Majority decision of Board affirming directive order of Regional Board VII (Kansas City). Public members concurring: George W. Taylor and Lloyd K. Garrison. Labor members concurring: Elmer E. Walker and Delmond Garst. Employer members dissenting on Par. I: George Bahrs and William Maloney.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the directive order dated Feb. 23, 1945, of the Regional War Labor Board for the Seventh Region, hereby decides the dispute between the parties and orders:

I. The said petition for review is hereby denied, and the said directive order of Feb. 23, 1945, is hereby affirmed and adopted as the order of the National War Labor Board.

II. The request for an oral hearing is denied.

Directive Order of Regional Board VII (Kansas City)

Feb. 25, 1945

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties

and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Reinstatement of M. H. Roberson

M. H. Roberson shall be reinstated to his former position as compressor operator as of Jan. 15, 1945, without loss of accumulated seniority.

2. Back Pay

The pay of M. H. Roberson shall be made whole from the date of his discharge on Sept. 25, 1944, to Oct. 19, 1944, the date of the discharge of H. M. Sparkman.

3. Penalty

As a penalty of the violation of the company's rules, as set out in the agreement, back pay for M. H. Roberson from Oct. 19, 1944, to Jan. 15, 1945, is hereby denied.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date hereof unless in the meantime a petition for review by the National War Labor Board is filed with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition for review by the National War Labor Board is filed wherein review of portions of this order is requested, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Signed by Paul F. Nachtman and Russell S. Bauder, public members; Harry H. Epperson and George H. Kinney, employer members; and John I. Rollings, and Harold J. Gibbons, labor members.

Report and Recommendations of the Panel

PARTIES TO THE DISPUTE

The Lion Oil Refining Company, hereinafter called the company, was incorporated on Oct. 23, 1923, under the laws of the State of Delaware. The company is engaged in the production of crude petroleum, the manufacture of refined petroleum products, and the sale of refined petroleum products at wholesale and retail. At the Eldorado Refinery where this dispute arises, the company manufactures 500,000 barrels of refined petroleum products per month. At the present time, approximately 50 per cent of the products manufactured go to the war effort.

Number of employees at the Eldorado Plant is 450, of whom 300 are included in the bargaining unit involved in this dispute.

The International Union of Operating Engineers, Local 381, hereinafter called the union, is an industrial type union and was certified by the National Labor Relations Board on June 17, 1942, as collective bargaining agent for production and maintenance employees at the company's Eldorado plant. The first contract was entered into by the parties on Aug. 24, 1942. Union and company have had contractual relationship continually since that date.

There have been no strikes nor lockouts.

HISTORY OF THE DISPUTE

On Sept. 25, 1944, M. A. Roberson, a compressor operator, was discharged by the plant superintendent, J. B. Rogerson, for striking a fellow employee, H. M. Sparkman, maintenance machinist, during the time that the men were on duty at the company's Eldorado, Ark., plant.

On Sept. 28, 1944, R. E. Gibbs, chairman of grievance committee of the union, accompanied by Roberson, called upon J. B. Rogerson, the superintendent of the plant, and requested the reinstatement of Roberson without loss of time or seniority, stating that they had proof that Sparkman had premeditated and aggravated Roberson into striking him and was more at fault than Roberson.

Rogerson stated that he had heard such rumors and would make further investigation.

As no further action was taken by Superintendent Rogerson, Craig Jones, president of the union, on Oct. 5, 1944,

in compliance with Art. VIII, Sec. 1, Par. C of present agreement, notified by letter T. M. Martin, vice-president of the company, of the rights of employees under agreement and requested the reinstatement of Roberson.

On Oct. 8, Martin replied to the union, requesting a meeting with the union officials, to be held at the company's Eldorado plant on Oct. 15, 1944. The meeting was held on that day, and, on Oct. 18, 1944, Martin, by letter, informed the union that the reinstatement of Roberson was denied and that he (Martin) had ordered the discharge of Sparkman.

The union then requested that the matter be submitted to arbitration, in accordance with Art. VIII, Sec. 1, Subparagraph C, and Sec. 2; as the third party to arbitration could not be agreed upon, the U. S. Conciliation Service was appealed to for assistance. Commissioner A. M. Thompson entered the case on Oct. 27, 1944, and, after several conferences, the parties became deadlocked. The case was then certified to the War Labor Board and set for hearing by Regional War Labor Board VII before a tripartite panel, to be held at 10:00 a. m., on Dec. 18, 1944, in Eldorado, Ark. The matter was heard on that date, and transmitted herewith is a record of entire proceedings with company's and union's briefs and exhibits.

ISSUE

Whether M. H. Roberson was wrongfully discharged by the company and consequently should be reinstated as an employee of the company.

Contentions

The union contended that Roberson was induced to strike Sparkman by premeditation and aggravation on the part of Sparkman with the sole purpose of causing Roberson to be discharged for violation of the company's nonfighting rule and that the company discharged Roberson without proper investigation of the matter.

The company contended that Roberson, in striking Sparkman, violated company's General Rule 20, p. 7, of Rules & Safety Practices, i.e., "Wrestling, fighting, or any horseplay is positively prohibited while on duty," and Art. XIV, Sec. 10, Reason 7 of the present agreement between the parties, i.e., Art. XIV, Sec. 10:

"It is agreed by and between the Company and the Union that the Company may, without limitation upon its rights to discharge an employee for any other valid reason, discharge any employee working at its refinery at Eldorado, Ark., for any of the following reasons * * * Reason 7—Violation of any criminal law or the commission of any other offense involving moral turpitude, such as stealing from fellow employees or from the Company."

That Roberson was aware of the nonfighting rule of the company and of the penalty for same.

That, under the laws of the State of Arkansas, striking a man is assault and battery and therefore is in violation of a criminal law.

That the company has rigidly enforced this rule and discharged many employees for its violation.

That enforcement of the rule is necessary for the protection and safety of the refinery and employees, due to the dangerous operation of a refinery and not only to the participants in a fight but to the safety of the entire plant as, in this case, an accident to the equipment in [the] compressor house could cause excessive pressure, breaking of pipes, gauges, etc., causing thereby the escape of gas and acids which would result in explosions, fires, injuries, and loss of life.

That Roberson, the aggressor in the fight, was rightfully discharged for cause.

DISCUSSION

The following undisputed facts were established at the panel hearing:

M. H. Roberson, a man in his fifties, has been employed by the company in the Eldorado plant for the past 12 years, starting in a labor gang at 25 cents per hour and, during various steps of promotion, reached the job classification of compressor operator at $1.20 per hour.

Roberson admits that he and Sparkman had had verbal arguments previous to the date of the fight on Sept. 25, 1944, and that on that date he did strike M. H. Sparkman three times when he lost his head after Sparkman remarked that he now knew how to cause him (Roberson) to lose his job and that Roberson did not know the power end from the compressor end of the machine and that he (Roberson) was fully aware of the company's penalty for fighting and, if he had not become so infuriated by Sparkman's remark, he would not have struck him.

Roberson is a member of the union.

M. H. Sparkman, a man about 30 years of age, has been employed by the company for 2 years and 8 months, was employed as a machine maintenance helper and was promoted to the job classification of machine maintenance man at a salary of $1.03 per hour.

Sparkman admits that he and Roberson had arguments previous to the date of fight and that he appreciated the fact that he and Roberson would become involved in a fight while they were working so he did inquire from older employees what the policy of the company was in respect to penalizing employees who engaged in a fight and learned that the rule was that an employee who engaged in such a fight would be discharged.

Sparkman stated that, after learning of the penalty, he decided that he would provoke Roberson by words to attack him and not fight back, thereby causing Roberson to be discharged.

Previous to the fight, Sparkman did remark to other employees that "he now knew the way to cause Roberson to lose his job."

Sparkman admits that he did say to Roberson, before Roberson struck him, that he now knew how to cause Roberson to lose his job and that he (Roberson) did not know the power end from the engine end of a compressor, and, when Roberson struck him, he made no effort to protect himself or strike back. The reason given by Sparkman for provoking Roberson into striking him was that he (Sparkman) wanted to protect his job.

Sparkman is not a member of the union.

Roberson was discharged on Sept. 25, 1944, and Sparkman was discharged on Oct. 19, 1944.

The union officials, in accordance with the provision of contract, on Sept. 28, 1944, did take up the matter as a grievance with the plant superintendent, J. B. Rogerson, stating the facts in regard to Sparkman's part in the fight. Rogerson admitted that he had heard such rumors and would investigate, but, as no action was taken by Rogerson within five (5) days, the union then took the matter to T. M. Martin, vice-president of the company, on Oct. 5, 1944, and Martin, on Oct. 18, 1944, conducted a hearing on the matter and, subsequent to the hearing, ordered the immediate discharge of Sparkman on Oct. 19, 1944, stating that, in his opinion, Sparkman was as guilty as Roberson but denied the union's request for the reinstatement of Roberson. He also admitted that the union did state, when questioned, that they were not interested in Sparkman losing his job as they did not want any employee to be discharged and were only interested in the reinstatement of Roberson, and that the company stated that they had discharged employees for fighting in company's plant on many occasions but had never had a similar case where employee had premeditatedly and deliberately provoked a fellow workmen into striking him, and that the union offered to take to the company the discharge of Sparkman as a grievance, but he declined the assistance of the union.

Findings

Pursuant to the above facts, the panel finds:

That Sparkman, for some unknown reason, did, with deliberation and premeditation, set out to provoke Roberson, a man many years his senior, into striking him and cause his discharge;

That Sparkman, a robust and much younger man than Roberson, made no attempt to defend himself, thus showing that this was part of his premeditated plan of action;

That Roberson was spurred by the taunts of Sparkman into an uncontrollable rage, and, while in this condition, did strike Sparkman;

That Sparkman was more at fault than Roberson;

That the company in a plant of this size must take all precautionary measures and enforce all safety rules by penalizing employees for infraction of company rules;

That the company superintendent, under the peculiar circumstances involved in this case, did act hastily and without thorough investigation in discharging Roberson;

That, no doubt, Roberson did commit assault and battery on Sparkman, but we are of the understanding that in criminal cases the court takes into consideration all the facts leading up to the crime; and

That Roberson was guilty of the violation of company's rules and the labor agreement but believes that the punishment, as prescribed by the company, meted out to a man who had been a long and faithful employee of the company, without a thorough investigation was too severe.

RECOMMENDATIONS

The panel unanimously makes the following recommendations to Regional War Labor Board VII:

That Roberson be reinstated as of Jan. 15, 1945, to his former position as compressor operator without loss of accumulated seniority.

That Roberson be granted back pay from the date of his discharge, Sept. 25, 1944, to Oct. 19, 1944, the date Sparkman was discharged after J. M. Martin, vice-president of the company, found that Sparkman was equally as guilty as Roberson.

That, as a penalty to Roberson for violating company's rules and agreement, he be denied back pay from Oct. 19, 1944, to Jan. 15, 1945.

Signed by R. M. Bristol, representing the public; Walter C. Whatley, representing labor, and Walter J. Guy, representing employers, subject to dissent, with opinion.

Dissenting Opinion of Employer Member

Jan. 8, 1945

DISCHARGE

GUY, Employer Member:—

"Regional War Labor Board No. 7, 2100 Fidelity Building, Kansas City, Mo.

"Gentlemen:

"After having given thorough consideration to the facts and circumstances surrounding this case, I deem it advisable to offer a minority and dissenting vote.

"It is my opinion that the company was justified in discharging Mr. Roberson and that the company's decision in the matter should be final.

"This opinion is based on the company rules and the provisions of the contract existing between the company and the union. Both the published rules and the contract contains a clause providing for discharge when the rule governing disputes and fights among employees is disregarded.

"To overrule the company's decision to dispose of this employee's services would have a very serious effect on morale and discipline. The very nature of the products of this plant is such a hazard to the lives of all other employees that, in my opinion, there can be no excuse for an infraction of the rules against fighting among employees while on duty.

"Sincerely yours,
"(S.) W. C. Guy,
"President."

BOEING AIRPLANE CO.—

Decision of National Board

In re BOEING AIRPLANE COMPANY [Wichita, Kans.] *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 334 (AFL). Case No. 111-14211-D, May 25, 1945 (made public July 16, 1945).

ARBITRATION—Arbitrability of dispute involving wage cut within rate range

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plan to give "demerits" within rate ranges as well as increases.

For other rulings see Index-Digest 10.150, 10.103 and 225.640 in this or other volumes.

Unanimous decision of Board affirming recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill and Nathan P. Feinsinger. Labor members concurring: James Brownlow and Carl J. Shipley. Employer members concurring: Earl Cannon and Lee H. Hill.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby directs the parties to submit to the Board of Arbitration under their collective bargaining agreement the question of whether this issue is arbitrable; upon a decision by the Board of Arbitration that the issue is arbitrable, then the merits of the issue shall be submitted to arbitration under the terms of the collective bargaining agreement.

Report and Recommendations of National Airframe Panel

WAGE REDUCTION

This dispute results from the company's refusal to process a grievance filed by the union alleging that the company has violated Art. VIII, Sec. A, of the collective bargaining agreement by reducing the wage rates of certain employees. Art. VIII, Sec. A, provides as follows: "No employee shall receive a reduction of wages as the result of this agreement."

The parties have set forth their respective positions as follows:

Union's Position

The company has refused to recognize a grievance of certain employees of the company involving a wage cut within a classification as a result of the evaluation sheet drawn up by the company. The union contends that the company is in violation of our union agreement both in not accepting this as a grievance and also in cutting a man's pay without changing his job assignment or classification. The union contends that any matters pertaining to wages, hours, or working conditions are subject to grievance procedure and is therefore asking that these grievances be acted on as such.

The union further contends that any cut in pay without changing the classification or job assignment is in direct violation of Art. VIII, Sec. A, of our current union agreement and asks that this provision of the agreement be strictly adhered to.

The union further contends that any procedure pertaining to wages, hours, or working conditions is subject to negotiation before being put into effect and any procedure initiated solely by the company without proper negotiation is invalid and should not have any bearing on the employees' wage rates or working conditions and is asking that any such procedure which is or has been in effect be declared null and void and the company be ordered to negotiate such procedures.

Company's Position

During negotiations between the company and the union in August and September of 1943, which resulted in a written agreement executed Oct. 7, 1943, and effective Nov. 6, 1943, the subject of within-grade rate increases for individual employees was discussed at length. The union representatives requested the company representatives to agree on a provision to be inserted in the agreement whereby employees' rates would be automatically advanced within a rate range according to length of service—in other words, an automatic advancement schedule. The company representatives insisted that employees' rates be adjusted within a rate range according to merit.

The agreement, as signed, did not include a provision relating to within-grade increases, nor was there any reservation contained therein reserving to the union or the company any right to request negotiation at any later time. As a matter of fact, Art. III, Sec. A, of the agreement reads as follows:

"Subject to the provisions of this agreement, both parties hereto expressly recognize the fact that the management functions of the Company are to be exercised solely by officers of the Company, including the direction of the working force; the maintenance of order and efficiency; the right to hire, suspend, or discharge for proper cause; and transfer, promote, demote, or to lay off because of lack of work or for other legitimate reasons."

Within a few days after the agreement was signed, the union requested the Conciliation Service of the U. S. Department of Labor to assist in settling what the union referred to as a dispute between the union and the company involving within-rate range rate increases. A commissioner of the Conciliation Service came to Wichita and sat with Mr. W. E. Edmondson, business representative of the union, and Mr. Chandler Jarvis, representing the company, at which meeting the position of both parties was clearly stated. The commissioner determined that a dispute existed and that it could not be settled by agreement. He recommended that the dispute be referred to the War Labor Board.

On Feb. 1, 1945, the Airframe Panel of the National War Labor Board conducted a hearing in Washington, D. C., at which representatives of the union and of the company presented their written briefs and oral arguments. On Apr. 13, 1944, in Case No. 111-4857-D [15 War Lab. Rep. 745], the National War Labor Board issued a directive order denying the request of the union for an automatic advancement schedule.

The union officials have been advised from time to time of minor revisions of the employees' rating chart, the

last revision having been made in August 1944.

The first paragraph of Art. XIV of the union agreement reads as follows:

"This agreement shall be in force and effect from Nov. 6, 1943, to Nov. 5, 1944, both dates inclusive, and shall continue in force and effect from year to year thereafter subject to termination as to all or any part of said agreement by the Company or by the Union, by written notice served not less than thirty (30) days prior to each yearly expiration date. Notice shall be deemed to have been served on the date of mailing thereof to the Company or the Union."

The first of October 1944, the union negotiating committee met with representatives of the company to determine if either party desired to open all or any part of the agreement for renegotiation. After much discussion, the representatives agreed that the agreement should not be opened, and both parties agreed to waive the right to serve notice of intention to open the agreement.

That part of the employee evaluation plan relating to wage adjustments within a rate range was fully explained to the union in August 1944, long prior to the October 1944 meeting at which the representatives of the union and of the company determined that there was no question or problem to negotiate.

The company takes the position in this discussion that the subject of wage adjustments within a rate range is not a problem subject for negotiation at this time, all rights for negotiation having been waived by the union for the duration of the present term of the contract.

Art. IV, Sec. B, of the collective bargaining agreement provides in part as follows: "All grievances which arise under this contract may be presented by the complaining employee to his shop committeeman or to his foreman." The agreement thereafter sets forth successive steps for the processing of the grievance, culminating in Step 4, submission of the grievance to a three-man Board of Arbitration. No restriction is placed upon the powers of the Board of Arbitration except the following: "The Board of Arbitration shall not have the jurisdiction to arbitrate away, in whole or in part, any provisions of this Agreement."

Recommendation

A majority of the panel, industry members dissenting, recommends that the parties be directed to submit this dispute to the Board of Arbitration for a determination of the rights of the parties under the existing collective bargaining agreement. The majority is of the opinion that the question of whether or not the union's grievance is arbitrable under the collective bargaining agreement is itself an appropriate matter to be submitted to the Board of Arbitration. The dissenting opinion of the industry members is attached.

Signed by Benjamin Aaron and Philip Brayton, public members; Paul Chalfant, R. Randall Irwin, J. Levering Israel, John Mead, and Robert W. Knadler, employer members; and Garry Cotton and Andrew Leiter, labor members.

Dissenting Opinion of Employer Members

May 10, 1945

MERIT RATING PLAN

It is the opinion of industry members of the panel that a novel question is raised in this case which has long been avoided by the National Board and which should now be settled after due process of hearing of the issue has been accorded both parties. Briefly stated, the question is: Is a merit rating plan a two-way street within a single occupation grade and rate range?

Starting in March 1943, with its blanket approval of employee rating plans in the West Coast Airframe Companies case [6 War Lab. Rep. 581], the Board has either approved many employee rating plans or, more recently, has ordered negotiation of standards. In the Consolidated Tucson case, the Board's order referred to merit "increase" procedure, and the Board denied the company's request for the substitution of the word "adjustment" for the word "increase."

While taking these several actions on merit rating plans, it has been standard practice to order that no individual employee should suffer a reduction in his rate of pay because of the application of a new job evaluation plan. Although the Board has affirmatively stated that rate reductions must be made where reclassification to a lower rated job occurs, it has not determined whether or not an attained ingrade position and rate cannot under any circumstances be reduced within grade and without a change of job duties.

For the reasons stated above, the issue brought in dispute in this case by the union is one which transcends in importance the particular grievance in this company. All companies which have had approval of merit rating plans or which have been ordered to negotiate objective criteria are entitled to know whether ingrade demerits may be invoked upon the same yardstick of performance which has resulted in ingrade merits.

Industry members dissent from recommendation of the majority in this case for two reasons which, in our opinion, merit special consideration:

1. Reference to two-step arbitration, first to determine arbitrability and next to decide the case on its merits, carries the broad implication that the panel and the Board believe the issue to be arbitrable.

2. If the arbitrator so determines, then whichever party may be the loser on the merits of the case will have been denied due process of a hearing and determination by the Board on the broad policy question involved.

The arbitrator's decision cannot settle more than the grievances of the particular individuals involved in this case and would not be reviewable by the Board unless that decision was found to exceed the jurisdiction of the arbitrator or to violate wage stabilization. The Board is quite properly reluctant to make such reviews.

The Board should note that the majority of the panel offers no constructive reasons or opinions in support of its recommendation. It has avoided any consideration of the major issue in dispute.

Due consideration of the positions set forth by the parties and quoted in the statement of the issues in the majority report convinces industry members that the dispute brought by the union is not subject to arbitration but is, nonetheless, a dispute. The contract provides for arbitration of grievances presented by an individual complaining employee. The union apparently has not caused individual grievances to be filed but has asked for an addition to the contract which is closed until November 1945. The company has stated that it has no unsettled grievances on individual merit rating and ingrade position.

The employee rating plan here under attack has been in effect for a number of years with no revisions having been made since September 1944, which was prior to negotiations of October 1944, upon renewal of the contract, at which time the union and the company determined that there was no question to negotiate, and the original contract was renewed without change for another year.

Inasmuch as the contract is silent on employee rating and inasmuch as statements of the parties indicate that the union has been kept informed of all changes in procedure and had no complaints about the operation of the merit plan as long as it resulted in merit increases and because the contract provides specifically that an arbitrator may not arbitrate away, in whole or in part, any provisions of the agreement, it is clear to us that the dispute before the Board is not arbitrable.

For the reasons detailed above, we urge the Board to instruct the panel to hold a hearing on this dispute and make recommendations to the Board as to its settlement.

Signed by Paul S. Chalfant and R. Randall Irwin, employer members.

GENERAL MOTORS CORP.—

Decision of National Board

In re General Motors Corporation, Packard Electric Division [Warren, Ohio] *and* United Electrical, Radio and Machine Workers of America, Local 717 (CIO). Case No. 111-16891-D, July 26, 1945.

WORKING CONDITIONS—ARBITRATION—Shop rules—Discipline for violation—Work stoppage—Status quo order

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by mak-

ing reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and subsequent status quo orders.

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.

For other rulings see Index-Digest 330.920, 46.410, 41.650, 165.100, 10.196, and 10.137 in this or other volumes.

Decision of Board amending and supplementing decision of Regional Board V (Cleveland).

Directive Order

"Mr. Louis G. Seaton
Industrial Relations Department
General Motors Corporation
Detroit, Mich.

"Mr. Victor Decavitch
United Electrical, Radio and Machine Workers of America (CIO)
830 Vincent Avenue
Cleveland, Ohio

"Re: General Motors Corporation (Packard Electric Division), Warren, Ohio, and United Electrical, Radio and Machine Workers of America (CIO), Local 717, Case No. 111-16891-D

"Gentlemen:

"In view of the policy question * involved, the National War Labor Board has undertaken to review, on its own motion, the July 11, 1945, order of the Regional Board in the above case. After due consideration of all the arguments and evidence presented at the hearing, the National War Labor Board takes the following action:

"1. The July 11, 1945, order of the Fifth Regional War Labor Board is affirmed, except as to Par. 4 and the following paragraphs which are hereby vacated.

"2. Full production should be resumed immediately, and toward that end the company is directed to reinstate all the affected employees.

"3. Any question concerning the disciplinary action taken by the company against the 59 employees involved shall be submitted immediately to the umpire under the contract for final and binding decision. The umpire shall have the right to consider the application of the shop rule alleged to have been violated, under all the circumstances of the case, and to order such remedy, including back pay, to the employees involved as may be appropriate if he finds that the action of the company, with respect to any or all of these 59 employees, was arbitrary.

"4. The union shall have the right to present to the umpire the question as to whether and to what extent the union has the right, during the term of the existing contract, to negotiate on the subject of shop rules.

"Very truly yours,
"Virginia F. Moore,
"Executive Assistant to the Board."

Compliance Order of Regional Board V (Cleveland)

July 11, 1945

Louis G. Seaton
Industrial Relations Dept.
General Motors Corporation
Detroit, Mich.

Carl Rigsby
Packard Electric Company
Division of General Motors
Warren, Ohio

Charles Parker
156 North High Street
Warren, Ohio

Jean Blair
Packard Electric Company
Division of General Motors
Warren, Ohio

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* Ed. Note: The company suspended 29 employees for violating a shop rule requiring that employees eat in the plant cafeteria and, in sympathy with the suspended employees, 30 other employees walked out. The shop rule in question was not a new rule in the Packard plant but was a new rule for the suspended employees because they had recently been transferred to the Packard plant from the company's adjoining Sunlight plant where there is no cafeteria and where, therefore, employees are permitted to eat at their working place. (Board Press Release B-2174)

Victor Decavitch
UER & MWA
830 Vincent Avenue
Cleveland, Ohio

The Fifth Regional War Labor Board by majority vote, industry members dissenting, today adopted the following notice:

"The Fifth Regional War Labor Board hereby finds:

"1. (a) That, in its order in the above entitled case dated July 5, 1945, the company was ordered 'to maintain the status quo as set forth above in respect to the reinstatement of the suspended employees and in respect to the location of their eating, pending the July 10 hearing.'

"(b) That the status quo in the order of July 5, 1945, was referred to as follows: 'It is also the finding of the Board that the status quo in respect to the past practice of these employees of eating at the location of their work should also be restored and maintained pending a preliminary hearing in this dispute.'

"2. That, at the preliminary hearing of July 10, 1945, held pursuant to the July 5, 1945, order, the Board found, based upon the facts presented at the hearing, that the past practice in respect to the location of eating of the toolroom employees who had, previous to July 1, been employed in the Packard plant was for such employees to eat in the cafeteria and that only those toolroom employees formerly in the sunlight toolroom and who were transferred into the Packard plant followed the past practice of being allowed to eat at the location of their work in the sunlight plant.

"3. That the company was willing to reinstate the toolroom employees formerly working in the Packard plant on the basis that they continue to observe the status quo in respect to their past practice of eating in the Packard plant cafeteria.

"4. That the company was, however, unwilling to observe the terms of the Board's directive order of July 5, 1945, in respect to offering employment to the toolroom employees recently transferred to the Packard plant and in respect to allowing such employees to continue to eat their lunches at the location of their work from July 5, 1945, to date, pursuant to the above referred order.

"Now, therefore, the Fifth Regional War Labor Board hereby notifies the Packard Electric Company Division of General Motors that, to effectuate compliance with the Board's directive order of July 5, 1945, the company shall immediately pay to the toolroom employees recently transferred to the Packard plant full pay for all time lost from and including July 6, 1945, through July 11, 1945, and shall notify the Fifth Regional War Labor Board by Friday, July 13, 1945, of its intention to abide by the terms of this compliance notice."

The Fifth Regional War Labor Board also today took action on the two questions set forth for hearing in its July 5, 1945, order, as follows:

1. "It was unanimously resolved that, on the question of the appropriate manner and procedure which should be adopted in finally settling the issues now in dispute, the parties are hereby referred for advice to the National War Labor Board in Washington." This action was based on the fact that only the limited question of restoring full production to the extent to which it was affected was referred to the Fifth Regional War Labor Board and that, to our knowledge, the New Case Committee of the National War Labor Board has not yet decided the appropriate procedure through which the dispute will finally be resolved on its merits.

On the second question set forth for hearing in the July 5, 1945, directive, the Board adopted the following motion by a seven to five vote, labor and one public member dissenting:

"That, pending a settlement of the issues now in dispute, the company is required to offer immediate reinstatement to the toolroom employees involved, but the company is not required by the War Labor Board to offer such reinstatement on the condition of allowing such employees to eat at the location of their work."

Directive Order of Regional Board V

July 5, 1945

"Charles Parker
156 North High Street
Warren, Ohio

"Gene Blair
c/o Packard Electric Co., Div. of General Motors
Warren, Ohio

"The National War Labor Board has had certified to it today a dispute case involving the Packard Electric Company, Warren, Ohio, a subsidiary of General Motors Corporation, and the

United Electrical, Radio and Machine Workers of America. This dispute has been transmitted to the Regional War Labor Board in Cleveland for the purpose of obtaining a full resumption of production.

"The Regional War Labor Board understands that, on Monday, July 2, approximately 60 employees of the toolroom department were suspended from employment because of a dispute over a change which the company initiated in the past practice of these toolroom employees of eating at the location of their work. It is the policy of the War Labor Board that, when a dispute arises over an alleged change in working conditions, the status quo should be maintained, pending a hearing on the issues in dispute. Consequently the Regional War Labor Board finds that the status quo in respect to the employment of these workers should be restored and that the reinstatement of these suspended employees should be maintained, pending a hearing before the Board. It is also the finding of the Board that the status quo in respect to the past practice of these employees of eating at the location of their work should also be restored and maintained, pending a preliminary hearing on this dispute. A preliminary hearing has been scheduled before the Fifth Regional War Labor Board in Cleveland on Tuesday afternoon, July 10, 1945, at 1:30 p. m., for the purpose of determining the following questions: (1) Whether the practice of the toolroom employees of eating at the location of their work should be continued beyond July 10, pending a final settlement or determination of this dispute on its merits, and (2) the question of the appropriate manner and procedure which should be adopted in finally settling the issues in dispute. The company is hereby ordered to maintain the status quo as set forth above in respect to the location of their eating, pending the July 10 hearing. The company is hereby requested to immediately notify the Fifth Regional War Labor Board of its compliance with the terms of this order.

"Fifth Regional War Labor Board,
"By Frederick H. Bullen, Chairman."

AMERICAN LACE MFRS. ASSN., INC.—

Decision of National Board

In re AMERICAN LACE MANUFACTURERS ASSOCIATION, INCORPORATED * *and* AMALGAMATED LACE OPERATIVES OF AMERICA, LEVER SECTION (Ind.). Case No. 111-12795-HO, June 14, 1945 (made public July 28, 1945).

WAGES—INEQUALITIES — INCENTIVE WAGE SYSTEMS—Adjustment of minimum incentive rate—Downtime duties

Lace manufacturers should grant five-per cent increase in contractual minimum incentive rate since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.

For other rulings see Index-Digest 260.124 and 265.135 in this or other volumes.

PREMIUM WAGE RATES—Denial of shift premium—Textile industry

Union's request that lace manufacturers establish second-shift premium is denied since lace manufacturing is part of textile industry and second-shift premiums are not generally paid in textile industry, having been denied by National Board in recent textile cases.

For other rulings see Index-Digest 140.589 in this or other volumes.

VACATIONS—Liberalization of vacation plan

Lace employees, all of whom now receive one week's vacation with pay equal to two per cent of annual earnings, are entitled to liberalization of vacation plan to provide second week's vacation after five years' service since (1) National Board granted second week's vacation in cotton garment case and (2) branches of textile industry in which only one week is

* ED. NOTE: For list for employers represented by the Association, see page 57.

granted are also branches in which employers provide group insurance at cost of about two per cent of payroll. Because of manpower shortage and to prevent depriving other employees of work during extended vacation shutdown, however, employers are granted option of giving pay in lieu of second week's vacation.

For other rulings see Index-Digest 205.323 in this or other volumes.

JOB PROTECTION—Apprentice ratio

Employer's request that apprentice ratio be liberalized is denied since since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.

For other rulings see Index-Digest 77.050 in this or other volumes.

WAGE ADJUSTMENTS—Retroactive date—Prior unwritten agreements

Awarded wage adjustments should be retroactive to date on which parties met with Conciliation Commission after written presentation of request for awarded adjustment. Parties' prior agreements have been informal and unwritten, and Board's customary criteria for determining retroactive dates, therefore, are not applicable.

For other rulings see Index-Digest 225.331 in this or other volumes.

Majority decision of Board adopting recommendations of hearing officer. Public members concurring: Edwin E. Witte and Jesse Freidin. Labor members concurring: Carl J. Shipley and Elmer E. Walker. Employer members dissenting: Earl Cannon and Frederick S. Fales.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders:

I. The recommendations of the hearing officer, dated Mar. 14, 1945, in this case are hereby adopted as the order of the National War Labor Board.

II. The terms and conditions of employment set forth in the said recommendations of Mar. 14, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Recommendations of the Hearing Officer

Mar. 14, 1945

THE PARTIES

The Company

The American Lace Manufacturer's Association with offices in Providence, R. I., is a manufacturer's association whose membership includes 30 companies listed in Exh. "A" of the association brief plus 3 companies added at the hearing. It is stipulated that all 33 companies are bound by the decision in this case (see Tr. pp. 4 and 5). Because of the addition of the three companies and in order to avoid any possible confusion, I have prepared, as Appendix I, attached hereto, a list of the names and addresses of the 33 companies. *

The Union

The union is the Amalgamated Lace Operatives of America, lever section, with headquarters in Philadelphia,

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* Ed. Note: The member companies of the American Lace Mfrs. Assn. are: American Fabrics Co., Bridgeport, Conn.; Bellamy Lace Works, Coventry Center, R. I.; Bodell Lace Co., 36 Lee Street, Pawtucket, R. I.; Carver Lace Works, Inc., 801 Bartholdi St., Bronx, N. Y.; Central Lace Works, Inc., 33 Foundry St., Central Falls, R. I.; Connecticut Lace Works, Inc., Norwalk, Conn.; Cousins Laces, Knotty Oak Road, R. F. D., West Warwick, R. I.; Coventry Lace Works, Coventry, R. I.; William Dalby & Son, 11 Van Houten St., Paterson 1, N.J.; Elyria Lace Co., Elyria, O.; Georga Hall Laces, Coventry, R. I.; Harris Lace Works, Coventry, R. I.; Hubbard Lace Works, 12 Colvin St., West Warwick, R. I.; Linwood Lace Works, Washington, R. I.; Liberty Lace and Netting Works, 90 East 229th St., New York 66, N. Y.; Native Lace Works, Inc., Monmouth St., Hightstown, N. J.; New England Lace Mills, Pawtucket, R. I.; North American Lace Co., 8th St. and Allegheny Ave., Philadelphia 33, Pa.; Nottingham Lace Works, Inc., Coventry Center, R. I.; Oldtown Lace Works, Oldtown, North Attleboro, Mass.; Rhode Island Lace Works, Inc., Bay Spring Ave., West Barrington, R. I.; Richmond Lace Works, Inc., Alton, R. I.; Riverpoint Lace Works, 821 Main St., West Warwick, R. I.; Ronnie Lace Works, Hopkins Hill Road, Washington, R. I.; Seekonk Lace Co., Pawtucket, R. I.; Towle Lace Works, Route 29, Lambertville, N. J.; United Nets Corp., High St., Central Falls, R. I.; Valley Lace Co., 21 Brayton Ave., West Warwick, R. I.; Windsor Lace Works, Coventry, R. I.; Van Raalte Co., 465 Getty Ave., Paterson, N. J.; Washington Lace Works, Inc., Washington, R. I.; Wilcox Lace Corp., 10 Cooley Ave., Middletown, Conn.; Thomas Wilson & Co., Port Jefferson, L. I., N. Y.

Pa. The lever section has a total membership of approximately 900, of whom approximately 250 are in the armed forces of the United States. The Amalgamated Lace Operatives also represent auxiliary workers and operators of lace curtain machines, but these workers are organized in separate sections and are not involved in the instant case. The total membership of all sections includes approximately 4,000 workers. The levers section has always bargained separately with the employers for its own members who are the operators of the lever machines and are commonly known as "twisthands." Therefore only the one classification of employees is involved in this case, and, in view of the long history of separate bargaining, I find that it is unnecessary to give any attention to the wage structure for employees in other sections.

The Amalgamated Lace Operatives of America is an old established, truly independent trade union, organized in 1892. Although it has no formal contract with the employers, the working arrangement represents the practice of a closed shop. Nor are there any nonunion mills of any significance.

The Industry

The industry is concentrated in New England, New York, New Jersey, and Philadelphia, Pa. By number of mills and number of machines, the parties to this case are distributed as follows:

State	No. of Mills	No. of Machines
Rhode Island	20	252*
New Jersey	4	37
Connecticut	3	58
New York	3	52
Pennsylvania	1	44
Ohio	1	31
Massachusetts	1	6
Total	33	480

The 33 companies, parties to this case through membership in the American Lace Manufacturers Association, constitute 69 per cent of all lace mills in the United States (33 out of a total of 48). There is another smaller trade association whose membership includes the bulk of the remaining 15 mills and a few independents. Because it is the largest association, it is the "leader" in the industry, and, since the lever section represents virtually all the twisthands in the United States, it may be assumed that the ultimate decision in the instant case will eventually be applied to the entire industry.

The lever machine is a large, complicated machine with several thousand moving parts. The twisthand is a highly skilled craftsman. The formal apprenticeship period is three years, and it is customary to select apprentices from among male auxiliary workers who may have worked at miscellaneous jobs in the machine room prior to the beginning of apprenticeship.

The products made on the machines in their approximate relative importance are:

1. Various types of laces for the ornamentation of women's and infants' wearing apparel, 2. veilings (including face and hat veils), 3. fabric for conversion into "cut and sewn" women's hosiery, and 4. certain types of bedspreads.

In addition to the above products which are all for civilian use, the industry has made a limited quantity of camouflage netting and mosquito netting for the armed forces. Most of this government production has now been curtailed except that some mills which also have lace curtain machines (not involved in the instant case) are still producing mosquito netting.

HISTORY OF CASE

It has already been noted that there is no formal labor agreement between the parties. Agreements are usually recorded by an exchange of correspondence, and there are innumerable trade practices and understandings developed over the years which have not been reduced to writing. Relations have been excellent and continue on an amicable basis. This is the first time in the union's long history that a dispute of any kind has gone before a government agency or any third party.

As is the usual custom following a union convention in the fall months, the union presented certain demands to the employers by letters from the secretary of the Amalgamated, dated Dec. 19, 1943, and Jan. 9, 1944. A joint meeting was held on Jan. 31, 1944, in New York City, at which time agreement was reached on the following points:

1. Increase from $.935 to $1.00 per hour for cutouts,

2. Increase from $.77 to $.85 per hour for straight-time work,

* Not including 3 mills in Coventry, R. I.

3. Piece rate of $.35 per one hundred ends for tying in cotton warps in mills where time work is not paid for this operation and where a higher piecework rate had not been paid previously.

4. Certain changes in specifications on Card 7.

A Form 10 application covering the above agreed items was jointly signed and approved by the Boston Regional War Labor Board on July 7, 1944.

There is a dispute as to whether certain other demands were dropped by the union or simply deferred for further study. That dispute will be discussed more fully later in this report under the heading of effective dates.

In any event, the secretary of the union advised the association, on June 17, 1944, that other demands were being made, including a 5 percent increase in all card and minimum rack rates. The parties failed to agree on these demands, and on Aug. 28, 1944, the parties met with Commissioner Walsh in Providence, R. I. It appears that certain items were agreed to by the negotiating committees but that upon referral to the membership by ballot, as is its usual custom, the association rejected the agreement.

On Nov. 7, 1944, the union requested Commissioner Walsh to certify four issues to the National War Labor Board. The Commissioner met again with the parties on Nov. 30 and Dec. 1, 1944, at which time the association entered a demand regarding apprentices. No agreement was reached on these various issues, and the case was certified to the National War Labor Board on Dec. 12, 1944. The parties did sign a hearing officer stipulation at the suggestion of the commissioner.

After receipt of the certification, William E. Simkin was appointed as hearing officer by the National War Labor Board. Hearings were scheduled and held in New York City on Jan. 22 and 23, 1945. The union filed a post-hearing brief on Feb. 1, 1945, and the association on Feb. 2, 1945. Briefs were exchanged. By agreement, a transcript of the hearing was taken and paid for by the parties.

ISSUES

The issues in dispute, as noted in the stipulation signed on Dec. 1, 1944, are [Card prices, minimum rack rates, tying in beams, shift bonus, vacations, apprentices, effective date, and price relief.]

The union requests the following:

1. A five per cent wage increase in the price card—the retroactive date to be Jan. 31, 1944.

2. Thirty-five cents per hundred for tying in beams—to be retroactive at the discretion of the hearing officer.

3. A five per cent bonus to be paid twisthands working on the second shift to be retroactive at the discretion of the hearing officer.

4. An extension of the paid vacation to two weeks' vacation with pay for all employees who have been employed five or more years with the same company—to take effect June 1, 1945.

Management requests the following:

1. We request that the Amalgamated Lace Operatives take such necessary action to provide for one learner (apprentice) to each three competent lacemakers. We further request that the Amalgamated Lace Operatives of America agree to the proposition that, in the event the ratio above mentioned shall prove inadequate, the executive board of the union and the labor relations committee of the manufacturers' association shall be empowered to make suitable adjustment promptly.

Background of Issues

Wage Payment Method

Before considering the specific wage demands it is necessary to outline the method of wage payment used for twisthands. The bulk of the work is on incentive, and, as might be expected, it is a very complicated wage structure. Reduced to its bare essentials, there are two time work rates. They may be described briefly as follows:

Minimum Time Work Rates

(a) Eighty-five cents per hour—applicable to certain types of work in making alterations, etc.

(b) One dollar per hour—applicable to cutouts and certain other types of machine down time beyond the control of the twisthand.

Incentive Rates (Piecework)

(a) Card price—an extremely complicated schedule for the building up of a piece rate (See pp. 3-22 of levers price card—Exhibit "D" (association brief)).

(b) Minimum Rack Price—a minimum piece rate determined by length of machine and gauge (number of points) of machine, to be used only when the card price is less than the minimum rack price.

(c) Tying in Cotton Warps (35 cents per 100 threads)—to be used where this operation is not paid at

time work rates or where a piece work rate higher than 35 cents was not paid prior to July 7, 1944.

The minimum time work rates, 1 (a) and 1 (b) above are not in dispute. As noted earlier, the new rates were agreed to in 1944 and were approved by the First Regional War Labor Board on July 7, 1944. The same statement applies to the rate for tying in cotton warps, 2 (c) above.

At one stage during the hearing in New York City on Jan. 22, there was a dispute as to whether the union's 5 per cent request applied to both 2 (a) (card price) and 2 (b) (minimum rack price) or only to the card prices. The union claimed that it included both. The association claimed that, as the stipulation was phrased, it could only include the card price. From the evidence before me, I conclude that both items are included in the issue. In fact, subsequent developments at the hearing show that the association did not press this point.

The demand for tying in beams is a request for an addition to the incentive scale similar to 2 (c) (tying in cotton warps).

Rate history:—The following table indicates the changes in wage rates since Jan. 1, 1941. The card prices and minimum rack prices will be listed as 100 per cent for Jan. 1, 1941, since it is obviously impossible to list all the various rates.

	Time Work (per hr.)		Incentive		
Date (Approximate)	Straight-Time Work	Cutouts	Minimum Rack Rates	Card Prices	Tying in Cotton Warps
Jan. 1, 1941....	$.66	$.76	100%	100%	None
Feb. 24, 1941...	.70	.85	9% to 10.3% Increase in Base Rate	100%	None
Jan. 5, 1942....	.77	.935	10% Increase	10% Increase	None
July 7, 1944....	.85	1.00	no Change	no Change	$.35 per 100 Threads

It will be noted that the Feb. 1, 1941, increase in minimum rack rates varied by type of machine from 9 per cent to 10.3 per cent. However, this increase was in the base rate only. To the base rates is added one-half cent per half gauge for all gauges over seven. This adjustment was not increased in January 1941. Since there are few seven-point machines in the industry, most of them being of finer gauge, the February 1941 increase averages less than ten per cent—probably about nine per cent.

Earnings Data:—The association has made a wage survey of average earnings of twisthands. It was presented as Exh. L. Although the basis for computation is not identical for each of the various periods, the general method of arriving at straight-time average hourly earnings is statistically sound and may be accepted. The survey may be summarized as follows:

Period	No. of Employees in Survey	Straight-time Weighted Average in Earnings
Survey of Identical Workers in 21 Plants		
1940 - Year	324	$1.141
1943 - Year	324	1.546
1944 - First 9 Months	324	1.591
Survey of All Twisthands in Reporting Mills		
Week Ending Nearest Jan. 15, '41	389	1.254
Week Ending Nearest Feb. 20, '43	354	1.416
First 9 Months of 1944	454	1.607

Whereas the first part of the table (Survey of Identical Workers in 21 Mills) is statistically accurate, the 1940 earnings have little significance here because testimony at the hearing developed the fact that early in December 1940, a wage cut which had been agreed to during the depression was restored. Therefore this average is computed over a year period during which most of the work was performed at rates approximately 10 per cent less than the Jan. 15, 1941, rates. It may be noted, however, that, with this adjustment, the 1940 earnings do check with the Jan. 15, 1941, earnings: 1940 earnings were $1.141, plus $.114, restored 10 per cent cut. Estimated 1940 earnings at Jan. 15, 1941, rates were $1.255. The actual average for a slightly larger group for the week ending Jan. 15, 1941, was $1.254.

It will be noted that, using the second half of the earnings data, average earnings since Jan. 15, 1944, have increased 29.8 per cent. During the same period of time the various components of the wage structure have increased approximately as follows: Straight-time work, 29 per cent; cut-out time work, 32 per cent; minimum rack prices, 19 per cent, and card prices, 10 per cent.

The new incentive rate for tying in cotton warps has also had some slight effect on earnings. This operation is not performed very often and is probably not a major factor in the rate structure although it does require considerable time when it does occur.

It seems certain that the overall increase of 29.8 per cent is explained by two factors: (1) Increase in rates of pay and (2) type of operations. Most of a twisthand's time is on incentive work. Therefore the 29 per cent and 32 per cent increase in the time-work rates cannot begin to account for the increase. The actual incentive rates have increased by 19 per cent and 10 per cent. The difference which may be from one-third to one-half of the total increase is explained by changes in type of operations. The restrictions on materials and the market demands have resulted in fewer style changes—therefore more continuous incentive operation. It also appears that the trend of styles has veered toward styles which may have higher incentive earning opportunities. These are transitory gains for the twisthands and should not be considered in the overall picture.

Five Per Cent Increase in Minimum Rack and Card Prices

This union request, as stated in the briefs and at the beginning of the hearing, is, in effect, a request for a general five per cent increase in practically all of the various incentive rates. It is obvious that such an increase is not approvable under existing wage stabilization principles. This was admitted by the union at the hearing. The union did insist that it is entitled to a five per cent increase in the card prices because the total increase in these card prices has been only 10 per cent since Jan. 1, 1941. It is pointed out that the other increases of any importance which exceed 10 per cent have been in time-work rates which represent but a small fraction of the total time worked and in the minimum rack rate which is simply an incentive rate floor under the card incentive rates. There is some merit to this proposition in spite of the overall average increase actually experienced. While approval might be questioned, the writer does believe that it would be approvable.

However, in spite of the possibility that an increase in the card prices might be approved, the union withdrew this request at the hearing and relies only on its request for a five per cent increase in the minimum rack rates. In effect, its final proposal is that the five per cent which may be due on card prices be transferred to five per cent on minimum rack prices.

When the employer representatives at the hearing were advised of this final union demand, it appeared for a time that the parties might agree to settle this issue on the basis of the revised demand. However, there was no final agreement, and the post-hearing brief filed by the association indicates that this issue is still in dispute.

Since the parties were so close to agreement, I conclude that major attention should be given here to whether this request is approvable under the wage stabilization program.

A rack is 1.920 motions of the machine. It is simply a measurement of machine production used in the industry to reduce all styles to a common denominator. Yardage would not be appropriate because it will fluctuate depending on the intricacy of the design being made. As noted previously, a card price is calculated for each style. If the card price is less than

the minimum rack price, the latter price is paid.

Out of a total of 374 machines included in the manufacturer's 1944 survey, 176 or 47.1 per cent were being paid at incentive rates higher than minimum rack rates. The record is not entirely clear as to whether 47.1 per cent of the machines are paying above the minimum rack price as stipulated in the price book or above the minimum rack price prevailing in the various mills, i.e., at card prices. The difference is of some importance because the minimum rack price is also a minimum rate in the dual sense that, prior to stabilization and continuing to the present day, many mills pay minimum rack prices above the book scale. The union stated at the hearing, and it was not denied by the employers, that some 60 per cent of all the mills in the industry are already paying minimum rack prices equal to or exceeding the instant union demand.

Thus the net effect of the revised union request is: 1. That twisthands paid at card prices will not receive an increase. (The only exception is in borderline instances where the new minimum rack rate will be higher than the card price) and 2. That in the estimated 60 per cent of the mills where minimum rack prices are now paid equal to or exceeding the minimum rack price requested in the instant case, twisthands will receive no increase.

On the basis of all the available evidence, I conclude that not more than 40 per cent of the twisthands in the industry would receive any increase and that, averaged over all the twisthands in the industry, the increase would be less than two per cent.

It should also be noted that the general effect of the union proposal is to limit the increases to those twisthands who are now in the lower earning group.

I conclude that the final union request should not be appraised as a general increase, that its essential purpose is to eliminate intra-plant inequities, and that it is approvable under present wage stabilization regulations.

I recommend the following rates:

Machine Size	Rate per Rack
260 in.	$.43
224 in.	.365
202 in.	.33
184 in. or Less	.30

All minimum rack rates are based on 7 point machines, increase of .005 cents per half gauge to be applied to machines of finer gauge, 10 per cent plus 5 per cent to be added to all the foregoing rates following the application of addition for gauge.

In any mill where present minimum rack rates exceed the above scale and are properly in effect, the price should not be reduced. However, in such instances there should be no increase in the minimum rack rate being paid.

Rates for Tying in Beams

Since July 7, 1944, the twisthands have received 35 cents per 100 threads for tying in warps. The same request is now made for tying in beams.

Warps are made up on large cylinders, a full warp being approximately 9 inches in diameter. Each warp may contain several thousand threads. A beam is a much smaller cylinder, being approximately 2 inches in diameter when filled and containing from 150 to 200 threads. The operations of tying in the threads on either a warp or a beam is to break each thread from the old warp or beam which has almost run out and tie it to a thread from the new full warp or beam. In either instance the machine must be stopped. The only essential difference, and it is a practical one, is that, when a new warp is tied in, the machine is down for some time because of the large number of threads. When a beam is tied in, the machine is down for only a few minutes. However, in the case of beams the frequency is much greater. Several may be tied in during a day's operations.

The union contends that there is an inequity because the operations are so similar. Moreover, it is pointed out that whether warps or beams are used depends on the pattern. Although both warps and beams are usually used, some simple lace or nets are made only from warps, and more complicated styles may on rare occasions run only from beams.

The association claims that the incentive rates (card and minimum rack) already allow for this operation. It is also pointed out that, in the long history of the industry, payments have not been made for tying in beams.

It is apparent that this issue arises as a result of the 1944 agreement to pay for tying in warps. Prior to that time, incentive rates had been paid for warps only in a few mills. That agreement was what broke the long established prior practice of including both

of these operations in the overall incentive prices.

There is some basis, in equity, for the union claim in comparison with the tying in of warps. In many respects, the operations are similar. Both result in idle machine time and therefore incentive time lost to the twisthand. However, I conclude that this demand should be denied in the instant case for the following reasons:

1. The practical problem is less serious with beams because the time lost on each beam is relatively short and the machine down time is more evenly distributed.

2. For many years the card prices and the minimum rack prices have, in effect, included this operation as well as tying in warps.

3. Adequate experience should be obtained at the new minimum rack rates prior to further adjustments in the incentive rate structure.

4. The union has not demonstrated by any factual data that there is an earnings loss on styles where there are many beams in contrast with styles with few beams. Such factual data should be collected and compiled to support this incentive rate request. As matters stand, I have no sound basis on which to appraise the particular rate requested, nor will any serious inequity be created by referring this matter to the usual negotiations at the end of this calendar year. By that time the necessary data may be secured by both parties. The increase in the minimum rack rates removes the most serious inequity.

Shift Bonus

At the present time there are no shift-bonus payments to twisthands. Normally, there are two twisthands who are more or less permanently assigned to one machine. This practice is called "working double-handed." These two employees rotate shifts, i.e., one twisthand works the eight-hour day shift one week and the eight-hour night shift the next week. There is no third shift.

This normal practice has two types of variations. Particularly during the present manpower shortage, there are a number of machines "working single-handed." There is only one twisthand assigned to the machine, and he works day shift. The machine is idle except for this one shift operation.

The second variation is a most unusual one. It is a carry-over from an old English practice of working a type of split shift where the two twisthands alternate short turns. For example:

Day	Twisthand No. 1	Twisthand No. 2
Monday	6:00 a.m.-11:00 a.m. 5:00 p.m.-10:00 p.m.	11:00 a.m.- 5:00 p.m.
Tuesday	11:00 a.m.- 5:00 p.m.	6:00 a.m.-11:00 a.m. 5:00 p.m.-10:00 p.m.
Wednesday	Same as Monday	Same as Monday
Thursday	Same as Tuesday	Same as Tuesday
Friday	6:00 a.m.-10:00 p.m. 2:00 p.m.- 6:00 p.m.	10:00 a.m.- 2:00 p.m. 6:00 p.m.-10:00 p.m.

Testimony at the hearing indicates that what I have called the normal practice of rotating eight-hour shifts is the most frequent type of shift operation, with the first and second variation following in that order in terms of numbers of twisthands involved.

Shift operation is not a new practice in the industry. In fact, during this war period there is more single-handed operation than usual for the reasons stated above.

The union requests a five per cent bonus for second-shift operation. It is admitted that there might be some difficulties in determining what is a second shift in the instances where what I have called the second variation from normal shift practice prevails. However, it is pointed out that this difficulty could be easily overcome because of another unusual practice, namely, the equal division of total earnings from the machine between the two twisthands who operate that machine. In support of its request, the union cites a long list of War Labor Board cases (national and regional) where shift bonus has been granted. In some of these cases, bonus has been awarded in spite of rotating shifts and based on the premise that the shift bonus is a payment for working out of daytime hours.

The association opposes any shift bonus. It points out the difficulties which might arise under the second variation of shift operation, noted above, but relies principally on the argument that, with rotating shifts, the net result of a five per cent night-shift bonus would be an approximate

2½ per cent increase to all twisthands and that this increase would almost necessarily persist after the war period.

I recommend that this union request be denied. This recommendation is not based on the fact that shifts rotate, nor is it based on the possible difficulties of application of a shift bonus in those cases where the second variation prevails. In my judgment, a rotating shift is not, in itself, a valid reason for denying a shift differential. I recommend denial because, in the textile cases just decided by the National Board [21 War Lab. Rep. 793], shift bonus was restricted to the third shift. This is a part of the textile industry, and I see no reason why this particular segment of the industry should benefit from a second-shift bonus which is generally not paid in the industry. Of all the citations of War Labor Board cases noted by the union, I find only four which may be considered as textile cases and where a second-shift bonus was awarded. They are: 1. Industrial Rayon Corporation, Paynesville and Cleveland, O., Region V, Case No. 111-4111-D, [18 War Lab. Rep. 569]; 2. Prairie du Chien Woolen Mills, Prairie du Chien, Wis., Region VI, Release No CR-867; 3. Fulton Bag and Cotton Mills, Dallas, Tex., Region VIII, Release wk. of Jan. 7, 1945; and 4. Franklinshire Worsted Mills, Philadelphia, Pa., Region III, Release No. 3-1380.

Unless the National Board should change its textile shift policy, it does not appear that these four cases offer sufficient precedent to award a second-shift bonus in the instant case.

Vacations

The present almost uniform practice in the industry is to grant all twisthands a one-week vacation with pay based on 2 per cent of the employee's earnings during the preceding year.

The union requests that the present practice be continued and that, in addition, employees with five or more years' seniority should be granted a two-week vacation with pay. In support of this request, the union notes that the War Labor Board usually grants a two-week vacation after five years of service.

The association resists this demand and gives the following reasons for its position:

1. The present practice in the lace industry and in most other branches of the textile industry is to limit vacations to one week.

2. A two-week vacation would require closing of the mills for two weeks, thus reducing production already limited by manpower shortages and depriving auxiliary employees of work for one week since they are paid only for a one-week vacation.

3. A two-week vacation is not required for health reasons because there is virtually no overtime after 40 hours per week in the industry, and employees therefore do not work abnormal hours.

4. Most twisthands have five or more years' seniority. Therefore the request is almost equivalent to a 2 per cent increase in pay and in labor cost to the industry.

I recommend that this union demand be granted. In the cotton garment industry case [13 War Lab. Rep. 81], the Board granted a two-week vacation request in spite of prior practice of only one-week vacation and in some isolated instances no vacation. In several other branches of the textile industry, the vacation is only one week but, in addition, employees benefit by sick, accident, and life insurance plans paid for by the employer at an approximate cost of 2 per cent for all employees, not just those with five years' seniority. I do conclude, however, that, during the present manpower shortage, it would be inequitable to the employers to require them to close down the mills for a two-week period. It would also be inequitable to the auxiliary workers who might be deprived of one week's work. I therefore recommend that, at the discretion of the employer, the additional 2 per cent may be a payment in lieu of a second week's vacation.

Apprentices

The union exercises a close control over apprentices. The present practice is to allow a ratio of one apprentice to nine twisthands. In emergency situations the union constitution permits relaxation of this ratio, and there are several instances in the past where more apprentices have been allowed. When an employer wishes to train an apprentice, he makes application to the union, and the application is approved or rejected.

The association requests that the ratio be changed to one apprentice to each three twisthands and, further, that a larger number of apprentices be permitted when the situation demands it. In support of this position, the association points out that there are 670 lever machines in the industry which would require 1,340 twisthands if all were "working double-handed." The lever section has only 950 members, distributed as follows: Now working on

machines, 660; in the armed forces, 248; members not in the armed forces and not working in the lace industry, 42; or a total of 950.

Even if all the twisthands in the armed forces and those working elsewhere should return after the war, it is claimed that there would be a serious shortage of twisthands.

In addition, the association points out that the average age of twisthands is very high and that normal replacements required by deaths or retirements will probably use more than the existing one to nine ratio.

The union notes that the one to nine ratio is a part of its constitution and cannot be changed except by action of the union convention. However, it claims that the flexibility provision, noted previously, is adequate to cover any hardship cases which the employers may report. In addition, the union points out that the War Manpower Commission would not now permit the hiring of male apprentices even if they were available. The industry may even be required to give up some of its present twisthands to more essential war industry.

As an immediate proposition, I agree with the union that this is not a live issue. The union does not permit operation of the machines by female workers and, in contrast to normal times, there are virtually no male auxiliary workers in the mills who could become apprentices. The War Manpower Commission will not now permit employment of male apprentices because this is not rated as an essential war industry. As of the date of the hearing, there were only six apprentices in 30 association mills employing a total of 463 twisthands. This is a ratio of 1 to 80, far below the permissible ratio of 1 to 9.

At the completion of the war, when suitable apprentices become available, the situation will be entirely different. It is extremely unlikely that the market demand will ever require the employment of 1,340 twisthands. Even in normal times, some machines are idle or operate single-handed. However, even if the drying up of the supply of apprentices during the war years and the average age of existing twisthands should be the only factor taken into account, it is more than probable that the one to nine ratio will be inadequate for the first few years after the war.

In this situation, I do not recommend that the one to nine ratio be changed. I would make such a recommendation if it appeared that the union would be unwilling to use the powers which its officers or executive committee have to relax the ratio. Since the ratio has been relaxed in the past in far less acute situations than will develop after the war and in view of the willingness of the union to be reasonable, I conclude that the use of the permissible flexibility is preferable to an ordered change in the ratio.

However, it has been noted that, as things stand, the union has complete control of the flexibility provision. If the union denies an employer's application for apprentices, the employer is powerless to do anything more than appeal to the union. While I believe that this union will be reasonable and that recourse to any third party will be unnecessary, I do conclude that a potential dispute over this matter should be arbitrable.

At the hearing, the parties agreed to negotiate a written contract. I recommend that that contract include an arbitration clause which would give the arbitrator sufficient authority to decide any dispute regarding the hiring of apprentices which might arise.

Effective Date

Minimum Rack Rate

The absence of any formal written agreement makes the determination of the effective date for the minimum rack rate a more difficult problem than is usual in War Labor Board cases.

The union requests that the rate be made effective as of Jan. 31, 1944, the date of the meeting of the parties after the union had presented its demands under dates of Dec. 19, 1943, and Jan. 9, 1944.

The association position is that, if any increase is awarded, it should be made effective as of the date of the order or, in any event, no earlier than Dec. 12, 1944, the date of certification of the case to the War Labor Board.

The association claims that, when the parties agreed upon the increases which were submitted to the Boston Regional War Labor Board and which were approved on July 7, 1944, it dropped its other demands. The union insists that the demands were not dropped but that the union merely deferred final discussion in the matter to permit the association to conduct its wage surveys.

It is difficult to appraise these two conflicting positions, and I will make no attempt here to summarize all the information submitted by the parties bearing on the question. The briefs,

exhibits, and transcripts are a part of the record.

As a solution equitable to both parties and in my opinion supported by the evidence, I recommend that the minimum rack rates be made effective as of the first payroll week beginning after Aug. 28, 1944, the date of the meeting with Commissioner Walsh after the union's letter of June 17, 1944.

If there are any serious complications in calculation and distribution of the retroactive pay, I recommend that in each mill these problems be worked out by agreement of the parties, including the possibility of a simplified method of calculation and distribution. In view of the amicable relations, I am sure there will be no problems in this respect.

Vacations

The liberalized vacation should be made effective as of July 1, 1945, as per the union request.

SUMMARY OF RECOMMENDATIONS

1. Card Prices

The union request for a 5 per cent increase in card prices (incentive) was withdrawn at the hearing and therefore is not now an issue before the National War Labor Board.

2. Minimum Rack Rates (Incentive)

(a) The union request for a 5 per cent increase in minimum rack rates should be awarded.

(b) Specifically, the recommended minimum rack rates recommended are:

Machine Size	Rate per Rack
260 in.	$.43
224 in.	.365
202 in.	.33
184 in. or Less	.30

All minimum rack rates are based on seven-point machines, increase of .005 cents per half gauge to be applied to machines of finer gauge; 1 per cent plus 5 per cent to be added to all the foregoing rates following application of the addition for gauge.

(c) In any mill where minimum rack rates presently exceed the above scale and are properly in effect, the price shall not be reduced. However, in such instance there shall be no increase in the minimum rack rates being paid.

3. Tying In Beams

(a) The union request for a rate of 35 cents per hundred threads should be denied for the instant case and for the current calendar year for reasons stated in these recommendations.

(b) It is recommended that both parties proceed to gather data as to the actual effect on earnings of styles with many beams and styles with few beams and the effect of the proposal on costs in order that this information will be available in the event that this or a similar request should be renewed at the usual negotiations which take place on or about the end of the calendar year. In the meantime, the most serious inequities will have been removed by the increase in the minimum rack rate.

4. Shift Bonus

The request of the union for a five per cent second-shift bonus should be denied.

5. Vacations

(a) All twisthands who have five or more years' seniority in the mill in which they are working, such seniority to be determined as of July 1, 1945, shall receive vacation pay calculated at four per cent of earnings during the preceding year.

(b) If production needs require, in the judgment of the employer, the vacation period may be limited to one week with the additional two per cent payment for five-year employees being paid in lieu of a second week's vacation.

6. Apprentices

(a) The request of the association for a contractual change in the apprenticeship ratio should be denied. The previously exercised right of the union to relax this ratio temporarily is adequate to meet situations which are sure to arise after the war provided that the union lives up to its announced intention to use its powers with equity and reasonableness.

(b) The parties have agreed to negotiate a written agreement. I do recommend that that agreement include an arbitration clause which will give the arbitrator sufficient authority to decide finally any dispute which might arise regarding the number of apprentices who may be employed.

7. Effective Date

(a) The effective date of the increased minimum rack rates should

be the beginning of the payroll week following Aug. 28, 1944.

(b) Any complications in calculation of and distribution of the retroactive pay arising from (a) above shall be worked out by agreement between the parties at each mill, including the determination of a simplified method of calculation if such should be jointly desired.

(c) The effective date of the increased vacation pay for five-year employees shall be July 1, 1945.

8. Price Relief

As of this date, the association has not stated that any application for increases in prices of the production will be made to the Office of Price Administration as a result of the adjustments herein recommended.

Signed by William E. Simkin, hearing officer for the Board.

E. I. DuPONT DE NEMOURS & CO.—

Decision of National Board

In re E. I. DuPont de Nemours & Co. (Wabash River Ordnance Works) [Newport, Ind.] *and* United Mine Workers of America, District 50, Local 12687 (Ind.). Case No. 111-7229-D, June 14, 1945 (made public Aug. 2, 1945).

HOURS OF WORK—Portal-to-portal pay—Ordnance employees

Employees of ordnance plant are not entitled to portal-to-portal pay, despite contention of union that employees must travel as much as 15 minutes from plant gate to place where they are required to report. Board is desirous that miscellaneous adjustments normally designed to meet special situation or problem should be worked out by parties themselves, and Board has not, therefore, solved these issues except in unusual circumstances.

For other rulings see Index-Digest 65.730 in this or other volumes.

Majority decision of Board affirming directive order of Regional Board VI (Chicago). Public members concurring: Edwin E. Witte and Jesse Freidin. Employer members concurring: Earl Cannon and Frederick S. Fales. Labor members dissenting: Carl J. Shipley and Elmer E. Walker.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the directive order dated Feb. 20, 1945, of the Regional War Labor Board for the Sixth Region, hereby decides the dispute between the parties and orders:

I. The said petition for review is hereby denied, and the said directive order of Feb. 20, 1945, is hereby affirmed and adopted as the order of the National War Labor Board.

II. The terms and conditions of employment set forth in said directive order of Feb. 20, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board VI (Chicago)

Feb. 20, 1945

I. The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that:

1. The union's request for a ten-cent per hour general wage increase is hereby denied.

2. The Board declines to act upon the union's request for an increase in the night-shift premium since this is not properly before the Board.

3. The union's request for portal-to-portal pay is hereby denied.*

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* Ed. Note: WLB Press Release B-2179 explained the Board's action with respect to portal-to-portal pay as follows:

4. The parties shall negotiate with respect to intra-plant inequities and classification of employees. Any dispute arising from such negotiations shall be settled through the regularly established grievance procedure in the contract between the parties.

II. The foregoing terms and conditions of employment shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from date hereof unless in the meantime a petition for review is filed with the National War Labor Board through the Sixth Regional Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. Notwithstanding any other provisions of this paragraph, that part of this directive order which continues in effect the terms and conditions of a prior contract which has expired or has been otherwise terminated shall not be suspended or stayed by the filing of a petition for review but shall be effective according to its terms unless and until the Board, upon consideration of a petition for review, otherwise directs.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect (subject only to the provisions of Par. V), and, in the event a petition is filed with the National War Labor Board through the Sixth Regional Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

"Desirous that miscellaneous adjustments normally designed to meet a special situation or problem within a company or industry be worked out by the parties themselves, the Board has not attempted to solve these issues except in unusual circumstances where it has been shown that there is some particular hazard, hardship, or abuse, or some pertinent legal requirement or policy, or an arbitrary or unreasonable discontinuance of a prior practice, or a substantial industry or area practice which it would be inequitable not to follow under all the circumstances of the case, or other compelling considerations of equity."

V. If a timely application for price relief has been filed with the Office of Price Administration as required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, the provisions of this directive order which are made the basis for the application shall in any event become effective only upon determination by the Office of Price Administration that the cost increases ordered will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action.

Signed by Edgar L. Warren and John Day Larkin, public members; J. B. Beardslee and C. B. Magrath, employer members; and George A. Nordstrom and George Lawson, labor members, subject to dissent on Pars. 1, 2, and 3.

Interim Directive Order of Regional Board VI

May 18, 1944

The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby orders that:

I. The parties reenter into collective bargaining negotiations forthwith for a period of ten days from the date of this interim directive order for the purpose of reaching an agreement on the existing unsettled issues.

II. The directive of the United States Conciliation Service be advised of this action and requested to assign a commissioner of conciliation to assist the parties in such negotiations.

III. If agreement has not been reached within the period specified, each party shall submit to the Regional Board a statement of its contentions on each unsettled issue, including the reason for failure to reach an agreement.

IV. After the expiration of the above stipulated period, the Regional Board will, in the absence of an agreement between the parties, take such further action as it deems proper with respect to any issue which may still remain unsettled.

Signed by Edgar L. Warren and Dale Yoder, public members; J. A. Powers and J. B. Beardslee, employer memmers; and D. R. Barneclo and Stanley T. Joers, labor members.

Report and Recommendation of the Panel

Nov. 24, 1944

This dispute involves several issues remaining unsolved following conciliation and the execution of a contract between the parties which reserved the question of a general increase of ten cents per hour and questions arising out of alleged improper classification of certain groups of employees. Shortly prior to the hearing before the panel, the union filed an amendment to its statement of matters in dispute which, in effect, added additional demands of portal-to-portal pay and an increase in the night-shift differential.

PARTIES TO THE DISPUTE

Company

This case involves the Wabash River Ordnance Works, operated by the above named company under contract with the War Department of the United States.

The plant was erected for the United States by the company at Newport, Ind., which is approximately mid-way between Terre Haute, Ind. and Danville, Ill., being some 25 miles from each of those cities.

The company is engaged in the production of high explosives, some of which are confidential in nature.

Approximately 2,150 employees are employed at the plant, of whom about 1,350 are in the bargaining union.

Union

Local No. 12687 of District No. 50, United Mine Workers of America (Ind.), was certified by the 14th Regional Office of the National Labor Relations Board on Sept. 16, 1943, as an exclusive bargaining agency for all hourly paid employees.

BACKGROUND

Following certification by the National Labor Relations Board, the parties negotiated from Dec. 1, 1943, to Mar. 16, 1944. Because of inability to reach an agreement on a number of issues, the matter was referred to the Conciliation Service and by it certified to the War Labor Board on Mar. 29, 1944.

Following this certification, the parties entered into a collective bargaining agreement on June 5, 1944, but at that time the question of a general wage increase of ten cents per hour and questions relating to alleged improper classifications were undetermined.

The union's statement alleges that there were two matters in dispute following the execution of the contract, which were: 1. A demand for a ten-cent per hour general increase in wages, and 2. reclassification of certain groups of workers.

A few days before the panel hearing, to wit, on Aug. 1, 1944, (the panel hearing being held on Aug. 10, 1944), the union served "Amendment to statement of matters in dispute" in which it specified the following in addition to the matters heretofore specified to wit: 1. Portal-to-portal pay, and 2. an increase in the night-shift differential from three cents per hour to five cents per hour.

The company's original brief was confined to the proposition of a general wage increase and to the question of classification of maintenance employees.

At the commencement of the panel hearing, the company objected to consideration by the panel of the questions of portal-to-portal pay and the night-shift differential upon two grounds:

1. That these matters were not properly before the panel, not having been certified and not having been considered in the original briefs. The company, in this respect, asserted that its brief was based upon the issues remaining at the time of the execution of the contract.

2. That these matters are concluded by the terms of the contract itself. It cited Art. X (e) of the contract, which established the night-shift differential of three cents per hour, and contended that the union was precluded from raising the question during the contract year, which prevented the panel from proceeding with consideration of that issue.

The union's position was that both of these questions are embraced in the general wage increase problem and that the panel should, accordingly, consider these issues.

This presents a legal problem to be determined before the specific issues can be considered.

The majority of the panel is of the opinion that the dispute, and not any

special issue, is certified and, from that point of view, the panel can make its recommendations on any issues which come before it. The industry member dissents from ruling.

However, the contract itself, Art. X (e), definitely establishes the three-cent premium for night shifts, and any change in that premium would be a change under the contract and would be subject to the reopening provision of Art. IX (b) of the contract, which requires 15 days' written notice. Accordingly, it is the opinion of the panel that any dispute originally involving the shift differential has been resolved by the parties themselves by their contract provision X, (e) and is, therefore, not before this panel. Any further dispute over the shift differential arises out of the contract and is subject to the procedure provided by the Par. IX, (b), of the contract. The majority of the panel, labor member dissenting, therefore hold that the claim for an increase in the night-shift differential cannot be considered.

In the opinion of the majority of the panel, the industry member dissenting, the same principle does not apply with respect of the issue of portal-to-portal pay for the reason that it appears to be involved in the general wage problem, in that consideration of the time, effort, and responsibility put in by the workmen generally is all involved in the question of a general increase. Accordingly, the ruling of the majority of the panel, the industry member dissenting, was that the question of portal-to-portal pay might be considered.

However, in order that the facts might be before the Board in case the Board took a different view of the legal question, the panel permitted testimony on both of these alleged questions, subject to the objections and under the rulings aforesaid.

As stated above, the union had originally presented an issue relating to alleged improper classification of maintenance workers, claiming that some were improperly classified, that some were differently classified and paid different rates than others doing the same kind of work, and that other inequities existed. At the suggestion of the panel, the parties agreed to attempt to iron out all these questions of plant inequities resulting from problems of classification, and, prior to the writing of this report, the panel was informed by both parties that this matter had been completely disposed of by the parties. The parties have agreed on a periodic review of mechanical craft classifications. Accordingly, the issue is not further discussed in this report.

One further preliminary problem remains for disposition. The company contended that the wages are subject to the jurisdiction of the War Deparment. However, the panel is of the opinion that the War Labor Board has jurisdiction of the dispute, that the procedure is controlled by General Order No. 14 [23 War Lab. Rep. 22, No. 3; V WCDS 538], and that it is the duty of the panel to hear the proofs and make recommendations.

The panel has received a statement of the War Department Wage Administration Agency's position on the issues in this case. The position of the department will be mentioned in connection with the detailed discussion of the separate issues.

ISSUES

The issues remaining in dispute (subject to the foregoing qualifications) are:

I. General wage increase of ten cents per hour,

II. Increase in night-shift differential, and

III. Portal-to-portal pay.

I. General wage increase

Union's Position

The union asserts that the employees are entitled to a general wage increase of ten cents per hour, claiming that the wages paid are generally below wages paid for comparable work in nearby communities, and, if not below the wages paid in the area, the transportation factor should be taken into consideration. The record discloses (p. 74) that most of the employees come from Clinton, Danville, and Terre Haute, with others coming from Rockville, Ridge Farm, Tilton, Paris, Georgetown, and Covington, with some from the nearby village of Newport. There is evidence to the effect that the railway transportation cost from Newport to Danville and from Newport to Terre Haute is approximately 60 cents per day but no evidence of the cost of transportation from the other points.

The union claims that wages paid in certain key occupations are below the wages paid for like work in other plants, these occupations including carpenters, painters, and electricians, as well as laborers. The union is un-

able to furnish specific information or even to assert affirmatively that some of the other occupations are underpaid because of the fact that some of the other occupations are not otherwise known in the area because of the special characteristics of the work at the plant.

The parties acknowledged that the Little Steel formula has been exhausted. Previous wage increases and adjustments have had the approval of the War Department.

Company's Position

The company asserts that the wages paid by it exceed the rates paid in the area generally; that the rates have been developed carefully and are properly related to each other; and that the company policy has been to pay wages equal at least to the highest paid for comparable services in the vicinity where they are paid. The company also takes the position that it is a trustee for the Government in the operation of this plant and accountable to the Government for economical operation, but that, if general increases are in order the company is not unwilling that they be granted. The company emphasizes, however, that, under the facts in this case, no general increases may be granted.

Discussion

In support of its position, the union has submitted Exh. "A" attached to its brief, in which it has attempted to set up rates for comparable jobs in other industries in the area, principally Indiana Gas and Chemical Corporation, Commercial Solvents Corporation, and Owen-Illinois Glass Corporation, all of Terre Haute, Ind. Exh. "A" also contains a column relating to the wages paid in the building trades in Terre Haute and another column denominated District No. 11, United Mine Workers of America. In reviewing this Exh. "A", it appears that there may be a few occupations in which some rates are below those paid in other industries.

The panel is of the opinion that the rates paid in the building trades industry should not be used as a guide, for the reason that the job classifications involved relate to maintenance work at the Wabash River Ordnance Plant rather than construction work in the building trades field, and the job descriptions are not necessarily comparable. In any case, the rate differential as to these particular jobs is not so great as to justify the assumption that the whole scale is out of line, particularly in view of the factors hereinafter set forth.

In its turn, the company has submitted (in confidence) data concerning a number of plants in the area, including the plants discussed by the union, but containing many more job descriptions, from which it appears that the rates paid at the Wabash River Ordnance Plant are well above those paid in other industries in the area.

Reference to the "T" rates established by the Board for Danville tends to establish the company's position. The going rates in Danville are established at 55 cents and at Terre Haute 65 cents per hour for labor. These two cities are the largest cities in the labor area involved; the others are relatively small country towns in which the rates may be assumed to be correspondingly less in the absence of any large war plants. Such other stabilized rates as are available for the area are also below rates for comparable work paid by the company.

In view of the fact that this plant is the only one of its kind anywhere in the vicinity, it would be futile to set up a complete comparable table, and the panel is of the opinion that the following table, including the key classifications referred to by the union and common labor, is adequate to show the comparable rate structure. This statement is based on the assumption that, generally speaking, all rates are related to each other. The union has not asserted otherwise (except with respect to certain claims for adjustment of job classifications and rates which have been worked out by the parties as hereinbefore indicated).

Classification	(Top Rate) DuPont Co.	T or E Rates	Other Rates In Community	Bldg. Trades
Carpenter	$1.24		$1.05; 1.06½; 1.00	$1.37½
Painter	1.03		.99½	1.50
Electrician	1.40		.96.4; 1.15; 1.01½; .95; 1.05; 1.00	1.50
Laborer	.75	$.55-.65	.70; 72.2; 72½; 74½; .62½; 1.52½; .65-.66	.85

The panel is of the opinion that it cannot disregard what appears to be obvious—namely, that, if the wages paid at this plant were inequitable in relation to rates paid in the area, this plant, located as it is in the country 30 miles from the nearest large town, would be entirely without adequate help, particularly in view of the transportation factor. While it may be true that some, or perhaps many, of the employees come by rail from Terre Haute or Danville, the train schedule is such that not a great many of them can be accommodated. The panel is of the opinion that many—no doubt most—of the workers come to work by private motor car or by bus and, under present circumstances, the use of car pools seems to be prevalent. Accordingly, we cannot arbitrarily apply the 60 cents per day transportation cost, which some of the employees may pay, as the factor in measuring the wages of all employees. The parties did not, and perhaps could not, submit detailed information as to just how far and in what manner each employee comes to work.

In any event, the panel is without sufficient information on which to make any finding regarding the cost of transportation. This is mentioned because, in spite of the cost of transportation, whatever it may be, the wages at this plant must be equal to, or in excess of, wages paid in the surrounding territory in order to attract so many employees to potentially dangerous jobs. The panel does not mean to suggest that the work here is actually dangerous, but it is apparent from cursory impression of the safety measures taken that danger is implicit in the operations.

It is also true that the plant is advertising for additional workers, but that is a common incident of manufacturing today, and it is probable that there is some turnover justifying the advertising for new employees. In this respect the plant is no different than any other.

The panel has been furnished a memorandum of the War Department Wage Administration Agency's position, in which the War Department asserts, (1) That no basis exists for an increase under the Little Steel formula; (2) that there are no gross inequalities as evidenced by the general alignment of people; (3) that no substandard rates exist; and (4) that the level of rates is already above not only the minimum but above the maximum level of sound and tested rates in the locality.

Under the circumstances, the panel is unable to find justification for any general wage increase.

Recommendation

For the reason that the wages paid at the Wabash River Ordnance Plant are presently in excess of those paid for comparable work in the area and in excess of the rates customarily approved by the Board, the panel recommends that no general wage increase be ordered.

II. Night-Shift Differential

Union's Position

The union contends that the night shift should be paid five cents per hour above the base rate instead of three cents per hour provided by the existing contract. In support of its position, the union contends that five cents per hour is the customary differential paid in the area.

Company's Position

The company contends, first, that the panel is precluded from hearing this issue because of the contract provision of three cents per hour. As hereinbefore indicated, the panel accepted evidence subject to its ruling that the matter had been concluded by the contract.

The company further contends that the five-cent per hour differential paid in some plants would not necessarily represent the prevailing practice and, in any case, should not be applied here for the reason that the shift differential here applies to all shift workers regardless of the time of day the shift starts. In other plants the shift differential usually applies to night work or work starting after a certain hour in the afternoon.

Discussion

The working hours of the regular nonshift day workers are from eight in the morning to four-thirty in the afternoon, with one-half hour off for lunch. The shift workers rotate among three shifts. Most of the time there are only two shifts, but, as to those jobs which are filled by shift workers, the differential applies to all workers on each shift. That means that, if the operation involves 3 shifts, there is 3 cents per hour extra paid for the entire 24 hours, or a total of 9 cents per hour extra. The union's demand, in effect, is to add another 2 cents per hour for each shift, or a total of 6

cents, making a total 24-hour shift differential of 15 cents. (R.P. 23 and 26).

The company submitted an exhibit of seven plants in the Danville and Terre Haute area, in two of which shift differentials were paid and in five of which differentials were not paid. The union asserted at the panel hearing that the area practice was to pay five cents per hour extra, but the union did not furnish specific information concerning the plants which it asserted paid that differential. In one of the plants referred to by the company, the differential was five cents per hour, and in another plant a two-hour premium allowance is made for shift workers.

Under these circumstances, the panel cannot say that the differential paid by the company is below that customarily paid in the area. The information supplied by the company discloses that no shift differential is paid in some of the larger plants in the area.

The position of the War Department is that treatment of this problem should be in accordance with industry practices in the area.

Recommendation

For the reasons, first, that the subject is controlled by the existing contract and, second, that the present differential is greater than customarily paid in the area, the panel is of the opinion that no increase in shift differential should be ordered.

III. Portal-to-Portal Pay

Union's Position

The union contends that the employees should be paid from the time they enter the clock gate at the easterly boundary of the property until they check out at the gate at the end of the day. The employees are now paid from the time they enter the change house, where they change their clothes, near their particular place of work until they leave the change house after work. The time interval between entering the gates and entering the change house may be all the way from 5 to 15 minutes. The union contends that, in order for the employees to report at the change house in the time required, they must in fact report to the clock gate at least 15 minutes earlier.

Company's Position

The company contends that it does not control the time at which employees must enter the clock gate. The clock gate exists in the interest of security and so that the company and War Department will know, at all times, who is within the plant property. The company further asserts that the employees are paid until they leave the change house after bathing upon completion of their work and this is equivalent to pay for an extra half hour.

Discussion

An understanding of the physical layout of the plant is desirable to a proper consideration of the issue of portal-to-portal pay. The plant is located in an area said to be about four or five square miles in extent, completely surrounded by an anti-sabotage fence, along the easterly boundary of which is located the "clock gate" through which all employees are required to enter the premises.

Extending westerly from this clock gate at irregular intervals in an area approximately one-half mile wide and one and one-half miles long are various operating units, and close to each one of these operating units is a so-called change house, to which the employees report before work to change to safety clothing and, when coming off duty, bathe and change into their regular clothing.

These change houses are customarily reached by buses operated by the company from the clock gate. The company claims that these buses run on schedule of about every five minutes and require in the neighborhood of five or six minutes to go from the clock gate to the change house furtherest from the gate (p. 32). Representatives of employees asserted that it often took fifteen minutes, including time waiting for the buses, between entering the clock gate and reaching the farther change houses.

The entrance to the area at the so-called "clock gate" consists of nine separate entrances or gates through which the men can pass simultaneously so that there is no appreciable delay or lining up before the gates. If the men come to work in their private cars, these cars must be left in a parking lot outside of the anti-sabotage fence and located adjacent to the clock gate. Once inside the gate they can either walk to the place of employment or take the bus and because of the distances involved, most of them take the bus.

In its memorandum, the War Department opposes portal-to-portal pay

on the general ground that such payments "could lead to widespread abuses, inflationary conditions, and have serious repercussions on the entire wage stabilization program." The effect of portal-to-portal pay at this plant on the wage stabilization program generally is hardly for this panel to consider. This and the other objections of the War Department appear rather general in nature and have little specific application to this case.

Actually these workers are "regimented" from the moment they pass through the clock gate until they leave. They are no longer free agents and are under the company's jurisdiction during all of that time. They cannot travel to their place of employment except in the company bus or on foot and cannot loiter around but must go directly to the specific place of employment.

The fact that this is deemed necessary for security reasons only and is imposed by the War Department should not make any difference so far as the company's own position is concerned. It is very likely true that, but for the necessity of security measures, the men might be permitted to report to the change house as much in advance of the checking-in time as they wished and by whatever conveyance or route they desired. This does not change the fact, however, that the workmen are actually under the control of the company from the moment they check in at the clock gate until they leave.

There was some dispute on the time element, the company contending that there was only 5 minutes or thereabouts involved in moving from one point to the other and the union contending that oftentimes the men spend 15 or more minutes in reaching their place of work. If the company's statement is correct on the time element, the additional burden incident to portal-to-portal pay will not constitute any appreciable financial burden.

It is the opinion of the panel that reasoning which stems from the concept of employees travelling different distances to work is not applicable. True, an employee can move nearer the plant if he wishes or further away if he wishes, and travel 10 instead of 30 miles, but in so doing he is a free agent. He is not a free agent in checking in first at an anti-sabotage gate and then being directed to some other place to do his actual work and in being required to go to that place in a certain manner. Accordingly, the panel believes that portal-to-portal pay should be ordered in this case.

Recommendation

For the foregoing reasons, the panel recommends that the directive order in this case contain a provision that the wages be computed on the basis of time elapsed between checking in at the clock gate and checking out following the end of the working period.

Signed by Ralph J. Drought, representing the public; C. W. Hunt, representing employers, subject to dissent with opinion; and Luther C. German, representing labor, subject to dissent with opinion.

Dissenting Opinion of Labor Representative

NIGHT-SHIFT DIFFERENTIAL

The labor member dissents with the majority recommendation of the panel on No. II.—Night Differential, and respectfully calls to the attention of the Board that, during the hearing, the two parties agreed to attempt to iron out all questions of improper classification of maintenance workers, inequities in the plant, and etc., through a program of upgrading. However, the union has forwarded a letter alleging that the company had done nothing at these hearings but give "vague promises". The failure of the company to do proper grading caused the demand for a general wage increase. Therefore, the union petitions that your honorable Board issue in your directive an order for the company to immediately meet and iron out inequities in the plant as the panel's report is based upon the assumption that this was to be done

The labor member is of the opinion that the majority decision of the Board on night differential is in error for the following reasons:

1. The accepted custom in the area is to pay five cents an hour or better for night work.

2. Due to the physical and social disadvantages, workers who are compelled to work a night shift by a firm in order to have employment are entitled to more than three cents an hour for such forced objectionable hours.

3. Rotating shifts are the most objectionable to the worker because of the health hazard and are not necessary as fixed shifts of regular hours can be worked.

4. The panel and the company are in absolute error in their contentions that the company is paying 9 cents per hour extra for night premium and would have to pay 15 cents per hour if union granted 2 cents an hour increase.

Discussion

For over forty years the rule of the industry working night shifts has been to pay five cents or more for night work. I refer you to the printers, the pressmen, the stereotypers, the photo-engravers, the bakers, the stationery engineers, etc., and in this connection permit me to refer you to the policy of the War Labor Board in paying five cents or more for night work.

The physical disadvantage of night work has been recognized by many medical theses written on this subject. Night work weakens the resistance in the body and makes it the prey of such diseases as tuberculosis and nervous disorders. Certainly three cents does not compensate in any degree the hazards of health a night worker is exposed to in his nightly work.

Rotating shifts are imposed for the convenience of the company in securing help. They are not necessary to the conduct of the business as three fixed shifts could be inaugurated and are in many industries. The one most known to the public is the newspaper field. Certainly three cents is not enough for rotating shifts as they are more injurious to health than any other shift as no worker can become accustomed to regular hours of sleep when they are constantly changed every two weeks.

In closing, permit me to call to the Board's attention the most glaring of errors. The contention that three cents an hour for night work imposes nine cents an hour extra on the company with three shifts rotating is in absolute error. Why this argument has not been debunked before is amazing.

The facts in any case of night work is that, irrespective of the shifts worked at night, the premium is just the amount stated for night work—in this case three cents. Take the newspaper field where they have shifts going to work any time from 4 p.m. to 1 a.m.; this will, in many cases, mean 4 night shifts. If they were getting five cents an hour for night work, that would not mean 20 cents an hour as a charge against the company; it [actually] means just five cents for every man on any night shift.

There are just two classes of work: Those who work days and those who work nights. Just because two shifts work nights, at a three-cent premium, doesn't mean the company is paying five cents for night work. It means that everyone working nights receives three cents over the day rate.

In conclusion, permit me to petition this Honorable Board to correct this error and grant an increase for night work.

Signed by Luther O. German, representing labor.

Dissenting Opinion of Employer Representative

PORTAL-TO-PORTAL PAY

The majority opinion of the panel includes a recommendation that the directive order in this case contain a provision that the employees' wages be computed on the basis of time elapsed between checking in at the clock gates and checking out following the end of the working period, primarily for the reason that the workmen are actually under the control of the company from the moment they check in at the clock gate until they leave and are "regimented" from the moment they pass through the clock gate unti they leave.

Actually the record contains no evidence of regimentation or company control of the employees following their checking in at the clock gates until they report for work, and, even if some limitation were imposed on the freedom of movement of the employees after checking in at the anti-sabotage fence, it is not believed that this should be the decisive factor.

The majority opinion erroneously indicates that all employees report to a change house before work to change into safety clothing and, when coming off duty, bathe and change into their regular clothing, which change houses are customarily reached by busses operated by the company from the clock gates, and that it is the time spent in traveling from the clock gate to and from the change house for which the employees should hereafter be paid. Actually it is only those who work in the explosives area whose work begins at the change house at 7:45 a.m., 3:45 p.m., and 11:45 p.m., at which time they change into protective clothing, and whose work ends at the change house at 4:15 p.m., 12:15 a.m., and

8:15 a.m. after they have bathed and changed clothing. There is no dispute by any of the parties that the men in the explosives area are compensated for such time spent before and after work in changing clothes and bathing. The explosives area employees can, if they wish, reach the change house either by company bus or on foot prior to 7:45 a.m., for example, and leave the change house, if they wish, by company bus or on foot after 4:15 p.m., for example, but they are still paid from 7:45 a.m. to 4:15 p.m., with a half-hour out for lunch.

Employees other than those working in the explosives area are not required to be in the change house at any particular hour and report only to the change house, if they do at all, for their own convenience to make a change of clothing or deposit their lunch. Such employees are required only to be at their place of work, e. g., the power house or machine shops, at 8:00 a.m. Naturally, however, some time is consumed in passing from the gate at the anti-sabotage fence to their particular place of work, but again the employees are free to reach their place of work on foot or by company-provided bus.*

While the explosives area employees are paid from the time they start changing clothes at the change house until they finish bathing and changing into street clothing at the change house at the close of the shift, the other employees are paid for the time they spend at their places of work as recorded by their foremen on their daily time cards since their conditions of employment do not require the use of protective clothing. In each case this has no relation to the time at which the men register on the clocks at the anti-sabotage fence as they enter and leave the plant. Such clocks are punched only for security reasons to have a record of who is present at the plant.

The distances between the anti-sabotage fence and the places at which the employees begin their work inside the plant vary greatly, and to some extent the time consumed in travel varies also by reason of the choice of employees as to whether they ride or walk. Thus it would be impossible to compute the actual travel time, and such pay would result in serious intra-plant inequities.

The majority opinion is also believed to be contradictory wherein it states that the employee is not a free agent in checking in first at an anti-sabotage gate and in being required to go to this place of work in a certain manner, for it is pointed out by the majority earlier that the employees can travel to their place of employment either in a company bus or on foot. The majority opinion also emphasizes the fact that the employees, after passing through the anti-sabotage fence, cannot loiter around but must go directly to the specific place of employment. Actually there is nothing in the record to this effect, and as pointed out in the footnote above, the employees frequently visit the plant cafeteria after passing through the clock alley. At least, none of them are prevented from doing so, if they desire.

Section 7(a) of the War Labor Disputes Act of June 25, 1943 [9 War Lab. Rep. VII; WCDS 5] states that the National War Labor Board shall have the power to decide a labor dispute which may lead to substantial interference with the war effort, but that, in making any such decision, the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended. The administration of the Fair Labor Standards Act is charged to the administrator of the Wage and Hour Division of the Department of Labor, who, in turn, is appointed by the President of the United States by and with the advice and consent of the Senate; and the courts have frequently said that the regulations and interpretations of the administrator will ordinarily be accepted and given great weight by them. While there is no court decision under the Fair Labor Standards Act involving this specific issue, except in the mining industry, the Wage and Hour Division in its Release No. R-1448 on June 11, 1941, held that time spent traveling from fences, walls, or other anti-sabotage barriers to working places will not be considered to be working time under the Wage and Hour Law. As late as Dec. 27, 1943, William R. McComb, Deputy Administrator of the Wage and Hour Division, advised the chief of the Labor Section of the War Department, Office of the Chief of Ordnance, that Release R-1448 was still applicable

* While it is not brought out in the transcript, the industry member understands that it is also common practice for many of the employees, after passing through the plant gate, to visit the plant cafeteria for food or refreshments before reporting to their particular place of work. This serves further to negate the statement in the majority opinion that the employees are "regimented" after they pass through the clock alley.

and that, with particular reference to ordnance plants, such as are involved in this case, the administrator did not regard the time spent traveling from the gate to the change houses as working time under either the Fair Labor Standards or the Walsh-Healey Public Contracts Acts. Until the courts or the administrator change this interpretation of the Fair Labor Standards Act, the War Labor Board is bound to follow it.

It is realized that the Supreme Court, last March in the Tennessee Coal & Iron case (321 U.S. 590), granted portal-to-portal pay to the iron ore miners and that the Fourth Circuit Court of Appeals recently extended this same right to portal-to-portal pay under the Fair Labor Standards Act to the coal miners. However, Justice Murphy, speaking for the Supreme Court in the Tennessee case, made it quite clear that its decision was based on the peculiar facts and circumstances present in the mining industry, since in that industry the journey from and to the portal involves continuous physical and mental exertion as well as hazards to life and limb. In fact, the Supreme Court emphasized the point as of much importance in its decision that the administrator of the Wage and Hour Division, on May 17, 1941, had reached this same conclusion in regard to underground travel in mines, which, of course, is diametrically contrary to the holding of the administrator in R-1448 on June 11, 1941, on how travel time is to be regarded in other situations.

Moreover, it is provided in Sec. 4 of the Wage Stabilization Law of Oct. 2, 1942, as amended Apr. 11, 1943 [16 War Lab. Rep. V; WCDS 9], that no action shall be taken under the authority of that Act with respect to wages or salaries, which is inconsistent with the provisions of the Fair Labor Standards Act of 1938, as amended. It has already been pointed out above how inconsistent the majority opinion is on portal-to-portal pay with the provisions of the Fair Labor Standards Act. Pursuant to the Act of Oct. 2, 1942, the President, in Executive Order No. 9250 (Wage Stabilization Order, Title VI) [8 War Lab. Rep. XXVII; WCDS 21], provided that nothing in the order should be construed as affecting the present operation of the Fair Labor Standards Act or the Walsh-Healey Act.

In re Atlas Powder Company (Weldon Spring, Missouri), the Kansas City Regional War Labor Board VII, Case No. 7-D-614 (111-3611-D), reported in 7 W & H Reporter 172, denied to the production workers at an ordnance plant very similar to the one involved in this proceeding travel time pay for the approximately 60 minutes a day consumed by the workers getting to and from their actual job after arriving at the plant gates. Similarly, the National War Labor Board in the B. F. Goodrich Company case, No. 111-1064-D, on Dec. 9, 1943 [13 War Lab. Rep. 20], denied the union's request (United Rubber Workers of America (CIO)) that elevator operators be paid for the time spent between the point where they are required to report for work and the point where their elevator is located.

The industry member concurs with the position of the company, as set forth on pp. 6 and 7 of the transcript, that the union and the company, by agreement and stipulation entered into incidental to executing a formal contract, had limited the items in dispute to two specific matters, neither of which were portal-to-portal pay; and that it is the duty of this panel to honor the area of agreement and understanding reached by the parties and not thereafter to permit other extraneous matters to be presented to the panel for its consideration. The agreement reached by the parties as to the items in dispute should preclude everything else from being passed upon by the Board just as much as the Board does not see fit to pass upon the subject matter of any item which is covered in the contract formerly entered into by the parties. It is conceivable that no contract might ever have been entered into if it were thought by either of the parties that the other party was reserving or intending to submit to the Board for decision any items except the two items specifically determined by the parties to be in dispute and reserved for decision by the Board at the time of signing the contract.

It is noteworthy that the Board has frequently held that it "deems compliance with contracts to be the cornerstone of sound industrial relations, and it will not modify unexpired contracts even in directions which may be desirable, except in emergencies and most unusual situations." See for example, Aluminum Company of America and International Union, United Automobile, Aircraft and Agricultural Employment Workers of America (CIO), NWLB Case No. 111-

2531, Aug. 9, 1944 [14 War Lab. Rep. 210]. In 26 Great Lakes Steamships Companies and Seafarers International Union (AFL), NWLB Case No. 111-2227-D, Feb. 9, 1944 [17 War Lab. Rep. 818], the Board declined to direct the reopening of a collective bargaining agreement for the purpose of wage negotiations, since at the time of certification of the case to the War Labor Board, bona fide contracts with no provision for reopening on the issue of wages were in effect. Here too there is no provision for reopening the contract on the portal-to-portal pay issue, but, on the contrary, the contract clearly implies, through the express agreements of the parties to submit two particular items only to the Board for decision, that it completely settled and resolved the desires of the parties on every item which is expressly excluded from the coverage of the written contract.

This decision of the parties is just as fundamentally a part of the agreement as are all the items and subjects written out in the contract, on none of which would the Board pass judgment.

Signed by C. W. Hunt, representing employers.

SAN FRANCISCO WHOLESALE JEWELERS—

Decision of Regional Board X (San Francisco)

In re SAN FRANCISCO WHOLESALE JEWELERS (E. W. REYNOLDS COMPANY, WILLIAMS AND PETERSON, INCORPORATED, and NORDMAN AND AURICH) [San Francisco, Calif.] *and* CALIFORNIA WATCHMAKERS' UNION, SAN FRANCISCO CHAPTER (Ind.). Case No. 111-15208 [10-D-907], July 5, 1945.

EMPLOYEES' BENEFITS—Group insurance—Denial despite overwhelming area practice

Union's request that three wholesale jewelers contribute to group insurance plan administered by union is denied despite panel's findings that (1) 95½ per cent of firms and 99 per cent of similar employees in jewelry industry in area are covered by union's plan, (2) National Board has policy of awarding insurance plans under extraordinary circumstances, and (3) overwhelming area practice present in instant case constitutes such extraordinary circumstance.

For other rulings see Index-Digest 49.300 in this or other volumes.

Majority decision of Regional Board X (San Francisco) rejecting recommendations of panel. Public members concurring: Arthur P. Allen and William S. Hopkins. Public member dissenting: James C. Hill. Employer members concurring: George O. Bahrs, Dwight C. Steele, and C. G. Brenneman. Labor members dissenting: Wendell Phillips, Herbert Wilson, and Ed Hall.

Directive Order

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders as follows:

The union's request that the agreement between the parties be amended to include a provision that the employers assume the cost of a group insurance plan covering life, accident, dismemberment, and sickness insurance and hospital and surgical benefits is denied.

II. The provisions of this order shall become operative as the order of the National War Labor Board fourteen (14) days after the date of issuance unless, within such fourteen (14) days, either party files a petition for National Board review of the order with the Tenth Regional War Labor Board in the manner prescribed in the "Summary of Procedures."

Either party may petition the Regional Board to make effective immediately, according to its terms, those provisions of the directive order on which review has not been sought, or the parties may mutually agree upon the date when the order or any part thereof shall take effect except that where a wage or salary adjustment is made subject to the approval of the Director of Economic Stabiliza-

tion, the parties may not, by their agreement, make such adjustment effective prior to the date of such approval. Notwithstanding any other provision of this paragraph, that part of a directive order which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated shall not be suspended or stayed by the filing of a petition for review but shall become effective according to its terms unless and until the National Board, upon consideration of a petition for review, otherwise directs.

Either party may, within seven (7) days of the date of issuance of the directive order, file with the Regional Board, in accordance with the "Summary of Procedures," a petition for Regional reconsideration. The filing of such a petition shall not, unless the Regional Board otherwise directs, stay or suspend the operation of the order nor shall it extend the time within which a party may petition for review.

Report and Recommendations of the Panel

PARTIES TO THE DISPUTE

The member firms of the San Francisco Wholesale Jewelers, involved herein, are: E. W. Reynolds Co., Williams & Petersen, Inc., and Nordman and Aurich.

The subject companies are wholesale jewelry firms which together employ a total of approximately 75 persons. The three subject firms are signatories to the last agreement with the union, which agreement was dated Sept. 7, 1943, and which covers the material pickers employed by the respective companies.

The subject union is the San Francisco chapter of the California Watchmakers, an independent union affiliated with the American Watchmakers' Union, which has contracts with wholesale and retail jewelry and watch repair firms in the San Francisco Bay area. The union was previously known as the International Jewelry Workers Union, Local 101 (AFL). Following consummation of the present agreement, Local 101 dropped its affiliation with the International Jewelry Workers (AFL) and became the San Francisco chapter of the California Watchmakers Union, (Ind.), affiliated with the American Watchmakers' Union. The employees represented herein by this union are two watch material pickers, one of whom is employed by Williams & Petersen, Inc., and one by E. W. Reynolds Company. No material picker is at present in the employ of Nordman and Aurich.

A material picker is an employee who "picks out or selects" watch materials or working parts of watches from a large stock maintained by the employer. Watch material, as defined in the contract, includes all parts required in the manufacture or repair of watches, clocks or time-recording movements, and case material, the latter referring to parts required in the manufacturing or repair of watch or clock cases.

BACKGROUND OF DISPUTE

The union has been the recognized bargaining agency since 1937. The present contract between the parties was signed as of Sept. 7, 1943, and became effective as of Sept. 15, 1943. Pursuant to the opening clause of the contract, the union notified the employers on July 31, 1944, of its desire to amend the agreement. Subsequent meetings between the parties failed to bring about an agreement, and conciliation proceedings were instituted thereafter. The disputed issue was not resolved through conciliation and, therefore, was certified to the War Labor Board as a dispute.

GROUP INSURANCE PLAN

The sole issue here involved concerns the union's request that the agreement between the parties be amended to include a provision that the employers assume the cost of a group insurance plan covering life, accident, dismemberment, and sickness insurance and hospital and surgical benefits.

The union proposes that a provision be added to the contract, requiring the subject employers to pay a stipulated amount into an established insurance fund, which at present covers all other companies with which the union has contracts. The fund provides for policies of group insurance which supply the following insurance benefits: Life insurance, $2000; accidental death and dismemberment, $2000; accident and sickness insurance, approximately 60 per cent of wages; hospitalization insurance and surgical benefits for employees and dependents; and employee medical benefits. Premiums for the insurance benefits are paid out of the insurance fund. It is specified that "None of the moneys paid into the insurance fund

shall be used for any purpose other than to pay premium for insurance benefits as herein provided and to defray administration expenses as herein provided." * It is likewise provided that all dividends earned by the policies shall be deposited in the insurance fund. †

Under the plan the employer, each week during the term of the agreement, pays into the fund a sum equal to five per cent of his 40-hour weekly payroll for all workers covered by the agreement. No employee is required to make any contribution to the fund. The particular insurance companies with which the policies are held are specified in the plan. The insurance fund is administered by the union, subject to provisions stipulated in the agreement, and it is specified that "to defray expenses in connection with the administration of said insurance fund, the union shall be entitled to collect from the insurance fund an amount not exceeding one-half per cent of the contributions made by the employer." ‡

The plan provides that "Any member of the Union who is employed by the Employer and whose craft and conditions of employment are included within this agreement and who otherwise qualifies under the rules and regulations promulgated hereunder and conforms thereto is eligible for the insurance benefits as herein provided." §

Note: The details of the plan are included in "Appendix A," submitted by the union as Exhibit No. 4.

The employers submit no counterproposal and oppose the union's request in toto.

Union's Position

The arguments presented by the union in substantiation of its proposal are summarized below:

1. The provision requested herein is identical in every respect with that presently in effect in all of the contracts covering watchmakers and watch repair workers, members of this union, employed in this industry in the San Francisco Bay area. All of the the following contracts at present include a provision identical to the one proposed herein:

(a) The contracts between this union and 37 retail jewelry stores in San Francisco, amended as of October 1944.

(b) The contracts between this union and three wholesale suppliers of crystals and dials, amended as of February 1945.

The agreements referred to under (a) and (b) above cover some 88 workers.

(c) The agreements between this union and 21 retail jewelery stores in Oakland, covering 37 watchmakers and repair employees, amended as of October 1944.

(d) The agreements between the Jewelry Workers Union, Local 36 (AFL), and 25 manufacturing jewelers, covering 150 jewelry workers in this area, amended as of April 1945.

2. The proposed insurance plan is exempt from wage stabilization.

It is contended that, since the National Board has recognized that a provision for an insurance fund such as the one herein proposed is not inflationary, the plan should not therefore be considered as a form of wages. Cited are the recommendations of the Director of Economic Stabilization, as amended ** which, the union states: Permit the establishment of group hospitalization policies or group accident and health insurance policies, the beneficiaries of which are the employees as well as the dependents of the employees, without applying to or securing the approval of the National Board.

Company's Position

The company submits contentions in support of its position, as summarized below:

1. The subject dispute "is not within the jurisdiction of the War Labor Board to be determined by exercise of its extraordinary wartime powers." It is maintained that the instant case is not a labor dispute "likely to lead to a substantial interference with the war effort."

2. Payment by the company of insurance benefits has never been a subject of collective bargaining between the parties. None of the previous contracts has ever included any provision for contributions by the employers of the union of any sum to provide insurance benefits to the employees.

* "Appendix A", Union Exhibit No. 4.

† Ibid.

‡ "Appendix A", Union Exhibit No. 4.

§ Ibid.

** Sec. 400.1, Subdiv. (h) (2). See Union Exhibit No. 5, which is a letter received by the union from the Wage and Hour and Public Contracts Division, United States Department of Labor, in respect to a Form I filed by the United Employers, Inc., and this union, requesting a ruling as to whether a provision identical to the one here proposed required Board approval.

3. Employees in one of the subject companies are already covered by a comprehensive insurance plan. Two out of the three employees involved at the time the union made its demand were already provided with medical, hospital, and surgery insurance under the "Blue Cross" plan. Under this plan, which covers all of the employees of the E. W. Reynolds Company, premiums for the insurance are paid by the employer. The Reynolds Company employees are also covered by a group life insurance plan, under which one of the two employees involved now has coverage. Compliance with the union's demands would therefore provide benefits for only one employee unless there were a duplication of benefits as to the other employees or unless the E. W. Reynolds Co. revised its existing plan.

4. The wage rate for material pickers has been increased by 40 per cent since January 1941. The rate presently in effect is $1.40 per hour.

5. The union's request is not in conformance with Board policy. The Board has refused to compel the inclusion of such provisions in collective bargaining agreements when such has not previously been the practice in the establishment. Cited in substantiation thereof are the cases of United States Rubber Company and the Textile Workers' Union of America, Local 9, (CIO); * The Federal Shipbuilding and Drydock Company†; Johns-Manville Company, Inc. ‡; Bethlehem Steel Company§; Strand Bakery Company**; the recent Basic Steel decision [22 War Lab. Rep. 87] and the Bluebird Potato Chip Co.††

6. It has not been the general practice in this area to include such provisions in collective bargaining agreements. The issue in dispute is not therefore within the jurisdiction of the War Labor Board to determine since the request involves a matter not "customarily included in collective bargaining agreements" at the time of the passage of the War Labor Disputes Act.

7. Prior to eight months ago, provisions for insurance plans were not the prevailing practice in the industry.

* NWLB Cases No. 111-5433-D and 111-8854-D, Feb. 23, 1945 [23 War Lab. Rep. 277].

† 11 War Lab. Rep. 226.

‡ 14 War Lab. Rep. 266.

§ 12 War Lab. Rep. 255.

** 5 War Lab. Rep. 262.

†† 111-5941-D, Oct. 30, 1944; B-1854 [20 War Lab. Rep. 18].

Findings

1. None of the previous contracts between the subject parties has included such a provision as herein requested or any comparable provision.

2. The requested provision represents overwhelming industry practice in the San Francisco Bay area. The same provision as is here proposed is included in the contracts covering the following:

(a) Thirty-seven retail jewelry stores in San Francisco and the subject union.

(b) Three wholesale suppliers of crystals and dials and the subject union.

Eighty-eight workers are covered by the above agreements.

(c) Twenty-one retail jewelry stores in Oakland and the subject union.

Thirty-seven watchmakers and repair employees are covered.

(d) Twenty-five manufacturing jewelers and the Jewelry Workers Union, Local 36 (AFL).

One hundred-fifty jewelry workers are covered.

3. Eighty-six out of a total of 89 firms in the San Francisco and Oakland areas are covered by the identical provision in contracts with the union. Only the three firms here involved do not have the requested provision.

4. Some 275 employees out of some 277 workers employed in the mechanical crafts division of the jewelry industry are covered by the identical provision. The only employees not covered by this provision are the two employees involved herein.

5. An inequity exists as between the 96½ per cent of the mechanical crafts division of the jewelry industry which is covered by the insurance plan and the 3½ per cent of the industry not covered by the provision. With respect to the number of employees in the industry, an inequity thus exists as between the 99 per cent of the employees in the industry who are covered by the insurance provision and the 1 per cent of the employees who are involved herein.

6. The two subject employees are at present actually covered by the insurance plan which is being requested. According to arrangements which the union has with the insurance companies, it is necessary for all members of the union to be covered by the plan in order to maintain eligibility for the benefits. Therefore, in order to meet the requirements, the union itself has been paying for the

two employees, members of the union, who are employed by the firms which do not contribute to the insurance fund.

7. There is no evidence that the subject employers pay higher wages than the other employers in the industry who are now included under the proposed insurance plan.

8. There is no evidence that the administration of the plan in those companies now operating under it has been unsatisfactory in any respect.

9. One of the three subject employers has another insurance plan in effect at present. The E. W. Reynolds Co. has a group life insurance plan, under which all premiums are paid by the company, as well as accidental, death, and dismemberment insurance and the "Blue Cross" plan for medical and hospital benefits.

Recommendations

The panel unanimously recommends that the union's request that the subject employers pay into an insurance fund a sum equal to 5 per cent of the 40-hour weekly payroll for all workers covered by this agreement be approved.

The panel unanimously recommends that the following additional clause be incorporated in the provision to be included in the contract between the parties:

A detailed audit by a certified public accountant shall be made of the insurance fund semi-annually, and a complete report of the audit shall be submitted to the employer immediately thereafter.

Industry Practice in the Area

The panel's unanimous recommendation is predicated on the finding of fact that the requested provision represents industry practice in the area. The data cited under the findings herein demonstrate conclusively that the proposal represents the prevalent practice throughout the vast majority of the industry involved. The fact that some 275 out of 277 employees in the industry are covered by the provision with some 86 out of 89 firms in San Francisco and Oakland included unequivocally establishes the prevailing practice in the industry throughout the Bay area.

Since approval of the request would extend a condition already existing in 96½ per cent of the firms in the industry to the remaining 3½ per cent, the panel concludes that such extension could not be considered unstabilizing to the industry involved.

Board Policy

The panel has taken cognizance of the precedents and statements issued by the National Board in denying the ordering of sick leave provisions in union contracts where such have not previously existed. Consideration was given to the specific cases cited by the employers, in each of which sick leave provisions were denied. The panel likewise noted the case of the United States Rubber Company,* cited by the parties herein, in which the National Board refused to direct the establishment of a group insurance plan.

However, the panel is of the opinion that under sufficiently compelling circumstances the ordering of an insurance plan is in conformance with the policy of the National Board, as discussed in connection with certain cases. Of particular relevance hereto is the Opinion of the public member in the U. S. Rubber case, in which it is stated:

"It is clear from all these cases that the Board will not normally order an employer to institute a group insurance plan or direct the liberalization of a plan in existence. Each case, however, will be judged on its own facts, and, *where it is clearly necessary in the interests of a fair and equitable disposition of the dispute to require the employer to institute or liberalize a group insurance plan, the Board will so direct.* But as a general rule the Board will not direct the establishment of a group insurance plan in a dispute case although it will approve any reasonable group insurance plan which is voluntarily instituted * * *. While normally the Board will not direct the establishment or liberalization of a group insurance plan, it recognizes that *there may be extraordinary circumstances rendering such action necessary in the interests of a fair and equitable determination in a dispute case.*" † (Italics supplied)

In view of the above, it is clear that ordering the institution of an insurance plan in a dispute case is precluded by the National Board's policy where the equities of a particular case undeniably warrant such action. The panel considers that the instant case is obviously one in which it is "necessary in the interests of a fair and equitable disposition of the dispute"

* Case No. 111-8354-D, Apr. 12, 1945.
† Opinion of Public Member Edwin E. Witte.

to require the employers to institute a group insurance plan. The panel holds that a case in which 96½ per cent of the establishments in the industry and 99 per cent of the employees in the industry are already covered by the identical plan which is being requested should be considered as representing "extraordinary circumstances."

Certain of the factors advanced by the National Board as reasons for denying the insurance plan in the United States Rubber case as well as sick leave provisions in other instances do not obtain in the subject case. For example, it has been held that it is inexpedient for the Board to select one insurance plan as against another and to designate one particular company as against others. In the instant case, such an objection is not applicable inasmuch as the particular insurance plan here requested is already in operation throughout the industry (with the exception of the three subject firms). The details of the plan, the companies, and specific procedures for administration of the plan have already been established and effected throughout the industry.

Further, an objection raised by the Board in the U. S. Rubber case was that "an employer should not be directed to pay premiums for group insurance for his employees where he pays his employees higher wages than do other employers of the industry or area who provide group insurance to their employees or if he provides other benefits which more than offset the benefits of the group insurance." With respect to this consideration, the public member's opinion stated:

"Very important in relation to the equities of the instant cases is the fact that the United States Rubber Company pays higher wages (at least to its textile workers) than do the members of the New Bedford Cotton Manufacturers' Association; further, the Regional Board made a definite finding to the effect that the company's vacation plan offers more in monetary value to the employees than the combined vacation and insurance benefits of the New Bedford Cotton Manufacturers' Association."

In the subject case, no evidence was submitted to indicate that the subject employers pay higher wages than the other employers in the industry or area who provide group insurance to their employees. Neither was evidence advanced to show that the subject employers provide other benefits which "more than offset the cost of the group insurance."

Further indication of the considerations recognized by the National Board in the evaluation of group insurance plans is included in the case of the 21 Massachusetts Leather & Sportswear Companies [21 War Lab. Rep. 382]. In that instance the National Board referred the case back to the Regional Board for action with the following advice:

"The above entitled case is being referred back to the Third Regional Board for further consideration and decision in the light of the policy indicated by the National Board in previous cases. The Board, in passing on demands relating to insurance plans, has considered (1) the difficulty of determining the details of such plans, (2) the special need or the hazards involved in the particular case, and (3) the practice of the industry involved."*

Two of the three factors above mentioned cannot be regarded as deterrents in the subject case: (a) The details of the requested plan have been completely worked out and the plan is now operative in the industry and (b) the plan has been shown to represent the practice prevailing in the overwhelming majority of the industry.

Relevant substantiation of the panel's conclusion that the proposed insurance plan is in conformance with wage stabilization policy is found in Public Member Feinsinger's opinion in the United States Rubber case, an excerpt from which follows:

"Group insurance plans are consistent with the national wage stabilization program. In the recent Basic Steel cases, the board stated that it will approve, under the wage stabilization program, reasonable group insurance plans agreed to by the company and the union * * * 19 War Lab. Rep. 575. On other occasions, the Board has indicated that such plans need not even be submitted for approval since they do not involve 'wages.' Support for the latter view is found in the regulations of the Economic Stabilization Director (Sec. 400.1 (g)) providing that the term 'wages' * * * means all forms of direct or indirect compensation * * * for personal services of an employee * * * excluding insurance and pension benefits in a reasonable

* See dissenting opinion of Public Member N. P. Feinsinger in U. S. Rubber case.

amount. Such benefits are defined (Subsec. (h)) as follows:

"(2) Amounts, not to exceed five per cent of the employees annual salary or wages * * * paid by an employer on account of premiums on insurance on the life of the employee and amounts regardless of the amount of salary otherwise received annually by the employee paid by the employer on account of premiums for participation in group life insurance without cash surrender value covering the lives of his employees or in group hospitalization policies or group health and accident insurance policies, the beneficiaries of which are employees * * *."*

Thus, on the basis of the policy discussed in the cases above cited, the panel is of the opinion that its action in the subject case is consonant with the determinative factors considered by the National Board in its evaluation of comparable proposals.

The panel noted the contention of the employer that, since one of the subject employers already has an insurance plan in existence (the E. W. Reynolds Co.), the plan requested by the union is unnecessary and would constitute a duplication. With respect to this argument, the panel cites the following comment from the dissenting opinion of the public member in the United States Rubber case relative to a comparable argument raised therein:

"The fact that the company already has a plan in existence strengthens rather than weakens the case for granting the relief requested for the reason that the company has voluntarily adopted the principle of group insurance * * * The proposed plan is, moreover, noncontributory whereas, under the company's plan, the employee pays part of the premium. It may be noted in passing, that the company's contribution, but not the employees,' may be offset at least partially against taxes. There is no obligation involved on the part of the company to cancel its present plan; and if there were, it is difficult to see why this possibility should alter the result."

No evidence was adduced in this case to indicate that the plan, as operative in the 86 establishments now covered by it, is unsatisfactory from the point of view of the employers. There was no criticism, for example, of the administration of the plan by the union in those firms now contributing to the insurance fund. Neither was there any indication of dissatisfaction on the part of the 277 employees covered by the plan. It may be tenably assumed, therefore, that the plan has been operating satisfactorily and in conformance with the rules as outlined in the detailed description of the plan (submitted by the union as Exhibits No. 4 and No. 7). Furthermore, with the addition of the provision for a regular audit and report to the employers, as recommended by the panel, any potential difficulty in administration and differences of opinion between the parties may be minimized.

The panel based its recommendation for the additional stipulation providing for a regular audit and report to the employers on the following considerations: (a) The stipulation affords protection to the beneficiary; (b) since the union is an independent union, it is responsible only to itself and not to any international office. Under such circumstances, it would be reasonable to insure certain responsibility to the employer on the part of the union and its representatives; and (c) a regular audit and report is the present practice of the union although it is not formally incorporated in the contract. It is believed by the panel that this additional provision, which was acceded to by the union at the hearing, represents a reasonable protection to all the parties concerned and should therefore be incorporated into the contract in the event that the proposed plan be approved.

EFFECTIVE DATE

Parties' Proposals

The union requests that the effective date for the proposed adjustment be set as Sept. 15, 1944, inasmuch as this is the anniversary date of the agreement. The company submits no specific proposal relative to retroactivity since it opposes institution of the entire plan.

Findings

1. Sept. 15, 1944, is the anniversary date of the contract between the parties.

2. The evidence indicates that the union's request for amendment of the agreement was made in conformance with the reopening clause of the contract.

* See dissenting opinion of Public Member N. P. Feinsinger in U. S. Rubber case.

Recommendation

On the basis of the above findings, the panel concludes that retroactivity to Sept. 15, 1944, is in accordance with Board policy with respect to retroactivity.

The panel therefore unanimously recommends that the effective date herein be set as Sept. 15, 1944.

SUMMARY

The panel unanimously recommends as follows:

Insurance Plan: (a) that the union's request that the subject employers pay into an insurance fund a sum equal to 5 per cent of the 40-hour weekly payroll for all workers covered by this agreement be approved and (b) that the following additional clause be incorporated in the provision to be included in the contract between the parties: "A detailed audit by a certified public accountant shall be made of the insurance fund semi-annually, and a complete report of the audit shall be submitted to the employer immediately thereafter."

Signed by Lucie Lawson, representing the public; A. L. Andersen, representing employers, and Jack Kopke, representing labor.

U. S. RUBBER CO.—

Decision of Regional Board I (Boston)

In re UNITED STATES RUBBER COMPANY, FISK CORD MILLS [New Bedford, Mass.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 59 (AFL). Case No. 111-15056-D, July 21, 1945.

EMPLOYEES' BENEFITS — Insurance plans

Union's request for employer-financed insurance plan of type which is uniform in area is refused where company contended, among other things, that it already has contributory group life insurance plan in effect in all its plants and that to order another form of insurance for one plant only would have far reaching repercussions on company's structure.

For other rulings see Index-Digest 49.300 in this or other volumes.

DISCHARGE AND REINSTATEMENT —Violation of union laws

Contract should include clause agreed to by parties under which employer will discharge any member of union who does not comply with union laws or contract working conditions within 24 hours after receiving notice from union.

For other rulings see Index-Digest 46.206 in this or other volumes.

Majority decision of Regional Board I (Boston) amending recommendations of panel. Public members concurring: James J. Healy and Oliver W. Branch. Employer members dissenting on Par. II(A): Edward S. Brackett, Jr. and Stanley M. Cooper. Labor members dissenting on Par. II(B), on denial of guaranteed workday and week and premium pay for Saturday and Sunday as such, and denial of union request for appointment of stewart not in company employ, and on arbitration and no-strike clause: John A. McConnell and Thomas Flavell.

Directive Order

The Regional War Labor Board for the First Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. Those terms and conditions mutually agreed to by the parties during negotiations unless necessary Board approval has not been obtained.

II. Those terms and conditions of employment set forth in the recommendations of the panel report dated June 19, 1945, except as hereinafter modified.

A. Maintenance of Membership

The union is awarded the standard maintenance-of-membership provision as adopted by the National War Labor Board on Nov. 30, 1943 [12 War Lab. Rep. XXVIII; WCDS 321].

B. Insurance

The union's request for group insurance is denied.

C. No-strike, No Lockout Clause

During the life of this agreement there shall be no strike, no lockout, or stoppage of work.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The procedure to be followed in making the retroactive payment of those employees who have either quit or been discharged shall be is accordance with the Board's Resolution of April 2, 1943 [26 War Lab. Rep. 3]

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of this order immediately effective.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Report and Recommendations of the Panel *

June 19, 1945

This case was certified to the National War Labor Board on Apr. 9, 1945. A hearing was held before the undersigned duly designated panel at Providence, R. I., on June 12, 1945.

PARTIES TO THE DISPUTE

Company

The United States Rubber Company, hereinafter called the company, is a New Jersey corporation operating 31 plants throughout the United States. This dispute involves the New Bedford, Mass., plan which is engaged in manufacturing cotton tire cord and duck yarns. Nine hundred seven (907) people are employed at the plant, of whom twenty-one (21) are involved in this dispute.

The Union

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 59 (AFL), hereinafter called the union, represents, for collective bargaining purposes, the employees here involved.

BACKGROUND

The parties entered into their first agreement on June 3, 1940, and contractual relations have existed ever since. The period covered by the last contract was from Dec. 31, to Jan. 15, 1944. However, the union requested modification of the contract in December 1943. The case was certified to the Board as Case No. 111-885-D. The Board rendered its decision at that time [23 War Lab. Rep. 277]. Upon the expiration of the last agreement, the parties entered into negotiations for a new agreement. No agreement was reached on many of the issues.

The major reason for this disagreement was based upon the parties' failure to agree upon a proper basis for comparison.

The union contended that it had achieved uniform conditions in the New Bedford area and the vast majority of the employers had entered into uniform contracts with the union and any deviation would be unfair to the other employers. The company, on the other hand, contended that other concerns were free to enter into any agreements they desired but that this company should not be forced to conform to the union's standard contract which might not fit the peculiar conditions of this company. It was the position of the company that the policy of the company throughout its 31 plants should have considerable weight in determining what conditions were ordered or agreed to in the instant plant.

These arguments of the parties were fundamental in the respective positions of each issue. The following issues were certified to the Board:

ISSUES

(1) Union security,
(2) Guaranteed workday and week,
(3) Reporting pay,
(4) Premium pay for Saturday and Sunday as such,
(5) Vacations,

* Ed. Note: Only that portion of the panel report relating to Issue 7, discharge, and Issue 8, group insurance, is reproduced.

(6) Appointment of steward not in company employ with obligation on part of company to hire the man designated by union even if it requires the discharge of the lowest man on seniority,

(7) Discharge by company for failure to comply with union laws,

(8) Group insurance,

(9) Leave of absence,

(10) All present privileges to be included in agreement under blanket clause,

(11) Procedure for union business representatives, and

(12) Arbitration.

[Ed. Note: Issues 1 through 6, discussed in the panel report at this point, are omitted.]

7. Discharge by Company for Failure to Comply with Union Laws

During the course of the hearing, the company agreed to accept the clause demanded by the union which was as follows:

"The employer agrees to discharge any member of the Union who does not comply with the union laws or the working conditions of this agreement within twenty-four (24) hours after receiving notice from the Union."

Recommendation

Thus, as agreement has been reached, no recommendation by the panel is necessary.

8. Group Insurance

Union's Position

"The Company shall procure and maintain in force, during the life of this agreement, an insurance policy providing the following benefits for its employees:

"Life Insurance:—$1,000.00 ($1,000.00 additional if death is due to accident).

"Hospitalization — Limit: — Thirty days during any one continuous period of disability. $6.00 daily with $3.00 special benefits. (This becomes payable only if the employee is actually admitted to a regular hospital and remains there for 18 hours or longer.)

"Sickness and Accident Benefits:— $15.40 a week, maximum: 13 weeks for any one continuous period of disability. Maximum for female disability arising from one pregnancy: 6 weeks. Sickness benefit is payable from the eighth day of disability; accident benefit is payable from the first day. (These benefits cover nonoccupational accidents and diseases not already covered by Workmen's Compensation.)

"Dismemberment Benefits: — (The amount to vary with the extent of the injury, but the principal sum to be $1,000.00.) It is understood that the company will not operate this insurance benefit plan themselves but will obtain a policy from a reputable and established insurance company, which will administer the benefits described above. These benefits will be subject to such conditions and limitations as standard practice in the insurance business prescribes. New employees shall become eligible for these benefits after such period of time following their employment as is prescribed in ordinary group policies of this type."

In support of its request, the union states that this clause is uniform in the area, and this company should conform to area practice.

Company's Position

The company is strongly opposed to the clause requested by the union and, in support of its position, advances the following reasons:

(1) In Case No. 111-8854-D involving the same parties, the request of the union was generally for an amount two-thirds of what is now being requested. It is apparent that the step-up demand is an attempt to have the Board compromise by settling for the lesser amount.

(2) This is a problem for legislation and not for the Board to order.

(3) To order this clause in one plant of the company would not be fair and equitable to all the other plants of the company, and under the Smith-Connally Act [9 War Lab. Reg. VII; WCDS 5] it is doubted whether the Board would have the power to order this type of insurance.

(4) The company has had a group life insurance plan in effect in all its plants, and to order another form of group insurance for only one plant would have far reaching repercussions in the company's structure. The cost of such a plan at the Fisk Cord Mill would be approximately $35,680 or ap- would have far-reaching repercussions

(5) These same issues were denied by the Regional Board and the National Board in Cases No. 111-5433-D and 111-8854-D, the former being the Textile Workers' request and the latter being the Teamsters' request.

Mr. Witte, public member of the National Board, wrote the majority opinion which states in part as follows:

"Each case, however, will be judged on its own facts, and, where it is clearly necessary, in the interest of a fair and equitable disposition of the dispute, to require the employer to institute or liberalize a group insurance plan, the Board will so direct. But, as a general rule, the Board will not direct the establishment of a group insurance plan in a dispute case although it will approve any reasonable group insurance plan which is voluntarily instituted."

(6) In the Basic Steel cases, 19 War Lab. Rep. 568, the National Board stated in part as follows:

"The Board will approve, under the wage stabilization program, reasonable group insurance plans agreed to by the company and the union but declines to order such a plan on the facts in these cases."

Discussion

Before analyzing the merits of this request, the panel will discuss and explain the background of this issue based upon information it has received from the various parties involved in the several dispute cases it has heard on this issue in the area.

In a contract dated June 19, 1943, between the New Bedford Cotton Manufacturers' Association and the Textile Workers' Union of America (CIO), a contract was entered into providing for noncontributory group insurance. The member mills of the association were as follows: The Wamsutta Mills, Hathaway Manufacturing Company, Gosnold Mills, Nonquitt Mills, Nashawena Mills, Pierce Brothers, Ltd., Soule Mill, Naushon Mills, and Kilburn Mills.

Approximately 10,000 employees were involved, and the association voluntarily extended the noncontributory insurance to the Teamsters who represented in general the warehouse employees. According to information received, the granting of this insurance was the result of a "trade" between the association and the textile workers, the union giving up a request for increased vacation for insurance and a two-year contract. Later, as a result of voluntary action by the parties, noncontributory insurance was extended to many other concerns in the area. It is estimated that approximately two-thirds of the 45,000 workers in the New Bedford-Fall River area enjoy this practice.

The U. S. Rubber Company, on the other hand, employs approximately 80,000 employees in 31 plants throughout the United States and has had a contributory plan for group life insurance that has been nation-wide and uniform since 1928. The company states, thus: When a new plant is taken over, the company places in effect its uniform conditions such as vacations, retirements, and pensions. Wage rates, on the other hand, vary in different localities due to the wage levels in the communities. The company estimated that institution of the union's plan, if extended to all of its plants, would cost approximately $2,500,000 annually. The major conflict in this area on this issue has involved the Textile Workers Union of America (CIO), and the Teamsters' Union and the Firestone and U. S. Rubber Company plants in New Bedford, Mass. This issue has come up repeatedly at every contract renewal. As yet the Board has not granted the union request. A brief summary of the various disputes at these two plants follows:

On May 10, 1943, dispute case No. 111-1518-D, involving the Firestone Campany, the Teamsters' Union, and the United Textile Workers of America (AFL), was certified to the National Board. At that time, insurance was not an issue and was not requested by either union. The directive orders were issued on Sept. 24, 1943, on the United Textile Workers of America's case and Oct. 26, 1943, on the Teamsters' case. It may be noted that this case was certified prior to the CIO agreement for insurance. The next case arising in this area was the U. S Rubber Company case involving the Textile Workers' Union of America (CIO), which was certified on Dec. 11, 1943, in Case No. 111-5433-D [23 War Lab. Rep. 277]. Insurance was an issue in this case. On May 12, 1944, an interm directive order was issued which denied the union request for insurance. On June 2, 1944, the Board denied the union request for reconsideration, and the case was referred to the National Board. Later this case was reopened by the Regional Board on its own motion, and a fact finding hearing was held on Nov. 28, 1944.

While the above mentioned case was pending, a dispute case was certified on June 22, 1944, involving the company, the same plant, and the Teamsters' Union. This case was numbered 111-8854-D [23 War Lab.

Rep. 277]. Insurance was also an issue in this case. The Board, on Oct. 19, 1944, issued an interim directive order providing that the request for insurance benefits would be deferred. The reason for deferring action on the insurance issue was that a similar question was pending before the National Board in the case of the 21 Massachusetts Leather and Sportswear Companies, Case No. 111-2548-D [21 War Lab. Rep. 382-D]. The Teamsters' Union requested a hearing on the matter of insurance benefits before the National Board, and the latter advised the union that it would be preferable to have this issue before the Regional Board, thus a fact finding hearing was held on Dec. 12, 1944. In order to have uniform treatment for Case No. 111-5433-D cited above and 111-8854-D, the Board on its own action reopened 111-5433-D as explained in the preceding paragraph.

The fact finding reports were presented to the National Board on both cases, and the National Board denied the union request in both cases, and an opinion was issued on Apr. 14, 1945, which explains the National Board decision in great detail.

At the time these disputes were pending, another case was certified to the Board on Mar. 10, 1944. This case involved the Firestone Rubber & Latex Products Company of Fall River, Mass., and the United Rubber Workers of America, (CIO). This case was numbered 111-7330-D [23 War Lab. Rep. 404]. Insurance was an issue in this case, and on Aug. 23, 1944, the union request was denied.

The Firestone Company of New Bedford, Mass. was involved in another dispute case with the Textile Workers' Union of America (Case No. 111-14508-D). A directive order was issued on Apr. 27, 1945, which referred the insurance issue back to the parties for final disposition. The last case involving these two companies was that of the Firestone Company d/b/a Belleville Warehouse which involved the same union as is involved in the instant case. This case was No. 111-15052-D and was heard by the same panel as is hearing this case. The panel in the Belleville Warehouse case recommended that this issue be referred back to the parties for further negotiations.

Both parties cited several cases decided by the National Board during their presentation. The panel finds that the policy of the National Board is well established. To summarize, under Sec. 7-a (2) of the War Labor Disputes Act, it states that the War Labor Board has the power and duty to decide disputes and provide, by order, wages and hours and all other terms and conditions (customarily included in collective bargaining agreements) governing the relations between the parties which shall be fair and equitable to employer and employees under all the circumstances of the case. It is not the policy itself that causes the difficulty, but it is the application of the policy to the facts in any one case that causes the difficulty. The panel will thus examine the facts in this case and the policy of the National Board and the Regional Board.

In the Basic Steel cases, 19 War Lab. Rep. 568, the National Board stated in part as follows:

"The Board will approve, under the wage stabilization program, reasonable group insurance plans agreed to by the company and the union but declines to order such a plan *on the facts in these cases.*" (Italics supplied)

On the basis of this quotation it is clear that the National Board clearly regards itself as having the power to establish reasonable group insurance plans in dispute cases as it merely declined to order such a plan on the facts in the Basic Steel cases. In the Babcock & Wilcox Company case, 14 War Lab. Rep. 681, the National Board refused to liberalize an existing plan. On the other side, the Regional Board ordered group insurance in the 21 Mass. Leather and Sportswear Manufacturing Companies, Case No. 111-2548-D, on Dec. 30, 1944. In the New Bedford Cordage Company, Case No. 111-12406-HO [24 War Lab. Rep. 333], the Board ordered the establishment of a group insurance plan.

In the 21 Mass. Leather and Sportswear Manufacturing Companies, the group insurance plan requested was standard in a majority of the industry throughout the country and a majority of the industry in the area. In the New Bedford Cordage case, the Board indicated the most important reason for granting group insurance was that a majority of the employees in the area engaged in the same type of work received the benefits of noncontributory group insurance and that the New Bedford plant was a single plant with no national affiliation.

In the U. S. Rubber case and in the Firestone case discussed earlier, one

consideration followed by the Regional Board and the National Board was that neither concern bargained with the New Bedford Cotton Manufacturers' Association and has not followed the policy of the association but has bargained separately following its nation-wide policy. This factor was a consideration of the Regional Board in Case No. 111-14508-D involving the Firestone Company, cited earlier, where the issue was referred back to the parties. This panel, after examining all the facts bearing on this issue, the evidence submitted by the parties, and opinions of the National and Regional Board, believes that any action in this case should be uniform with the action in the Firestone case and will thus recommend that this issue be referred back to the parties.

Recommendations

This issue be referred back to the parties for further negotiations.

[Ed. Note: Issues 9 through 12, discussed in the panel report at this point, are omitted.]

Signed by Philip Taft, representing the public; Chesley W. Stone, representing employers, subject to dissent on Issue 1; and Abe Pearlstein, representing labor, subject to dissent on Issues 2, 4, 6, 8, and 12.

ARMSTRONG CORK CO.—

Decision of Regional Board III (Philadelphia)

In re Armstrong Cork Company [Millville, N. J.] *and* Glass Bottle Blowers Association of the United States and Canada, Local 7 (AFL). Case No. 111-12569-D, July 5, 1945.

BONUS PAYMENTS—Attendance bonus—Discontinuance permitted

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek

For other rulings see Index-Digest 15.050 and 15.416 in this or other volumes.

Majority decision of Regional Board III (Philadelphia) amending recommendations of panel. Public members concurring: Frank C. Pierson and Howard Teaf. Employer members dissenting on Par. I: S. E. Lauer and J. W. Trauernicht. Labor members dissenting on Par. IV: John B. Backhus and Joseph Hueter.

Directive Order

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. (1) The maintenance-of-membership provision, as contained in the prior agreement of the parties, shall remain in effect and continue to govern the relations of the parties.

(2) The company shall deduct from the wages and turn over to the proper union officials the initiation fees and monthly dues of such members of the union as individually and voluntarily certify in writing that they irrevocably authorize such deductions for the term of the contract.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. No action is taken pending an oral hearing on the union's request for a 10-cent per hour general wage increase and a 2-cent per hour increase to correct intra-plant inequalities. No action is taken on retroactivity, pending settlement of the wage issues.

IV. The union's request for the continuation of the modified attendance bonus plan is denied.

V. This order shall stand confirmed as the order of the National War Labor Board unless, within 14 days from the date hereof, a petition for review is mailed to or filed with the National War Labor Board, in which event this

order shall be suspended until dispositon of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

VI. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

Report and Recommendations of the Panel *

May 24, 1945

PARTIES

The company is the Armstrong Cork Company, Millville, N. J., plant. This plant is engaged in the manufacture of glass containers, insulators, pressure ware, and medicinal and toilet ware.

The hourly employees at this plant number 881, of which 589 are men, 292 women.

The union is the Glass Bottle Blowers Association of the United States and Canada, Miscellaneous, Local No. 7 (AFL).

HISTORY OF THE DISPUTE

For the purpose of collective bargaining, the workers at the Millville plant are grouped into five units:

1. Employees of the mold shop, approximately 50 men. They are represented by the American Flint Glass Workers, Local No. 7 (AFL).

2. Employees of the machine shop, approximately 20 men. They are represented by the American Flint Glass Workers, Local No. 145 (AFL).

3. Operators of the automatic feed and flow machines, approximately 80 men. They are represented by the Glass Bottle Blowers Association of the United States and Canada, Local No. 7 (AFL).

4. The testers, checkers, packers, and sorters, approximately 200, about 50 men and 150 women. They are represented by the Federation of Glass Ceramic, and Silica Sand Workers of America, Local No. 69 (CIO).

5. The remaining workers, approximate 531, of which 389 are men and 142 are women. They are grouped for collective bargaining purposes into what is named the "miscellaneous department." This department is represented by the Glass Bottle Blowers Association of the United States and Canada, Local No. 7 (AFL).

This dispute covers only the employees described in Group 5 above, the "miscellaneous department."

The workers in the first three groups are covered by collective bargaining agreements which are negotiated annually on an industry-wide basis.

Workers in the fourth group are covered by locally negotiated agreements.

On Mar. 10, 1941, following a consent election, the Glass Bottle Blowers Association of the United States and Canada was certified by the National Labor Relations Board as the collective bargaining agent for the "miscellaneous department."

The first agreement signed May 2, 1941 expired Aug. 31, 1941. The second contract expired Dec. 31, 1942.

Negotiations for the renewal of the second contract were started on Nov. 30, 1942. By Dec. 2, 1942, all issues had been agreed upon except wages, union shop, and check-off. A 15-cent hourly general wage increase was asked by the union. The company offered a three-cent hourly increase but rejected the union shop and check-off.

A representative of the United States Conciliation Service was present at the Jan. 4, 1943, meeting but no agreement was reached. On Feb. 8, 1943, the dispute was certified to the National War Labor Board (Case No. 111-385-C). This case was settled by the Third Regional War Labor Board on Aug. 4, 1943. The Board directed a general wage increase of five cents per hour and standard maintenance of membership. The check-off was denied.

On Sept. 22, 1943, negotiations were begun for a contract for the year Sept. 1, 1943, to Aug. 31, 1944. On Nov. 4, 1943, agreement had been reached on all issues except the union demand for a general wage increase of two cents per hour. A completed agreement was entered into on Nov. 17, 1943, with a termination date of Aug. 31, 1944. This agreement contained a statement in the wage section that the execution of the agreement did not prejudice the union's right to ask the National War Labor

* Ed. Note: Only that portion of the panel report relating to Issue 3a, attendance bonus, is reproduced.

Board for a general wage increase of two cents per hour.

On Jan. 18, 1944, the company was informed that the union demand for a general hourly increase of two cents had been certified to the National War Labor Board as Case No. 111-5966-D. The two-cent demand was denied by the Third Regional War Labor Board on May 5, 1944. The union petition to the National War Labor Board for a review of the Regional Board's order was denied on Aug. 1, 1944.

ISSUES

1. Union shop,
2. Check-off,
3. Wages,
(a) Attendance bonus,
(b) Ten cents per hour general increase, and
(c) Two cents per hour general increase.

[ED. NOTE: Issues 1 and 2, discussed in the panel report at this point, are omitted.]

3a. Attendance Bonus

Union's Position

The company-union contract executed on Nov. 17, 1943, provided for an attendance bonus for the "miscellaneous department" calculated weekly and based on the number of hours worked by an individual employee during each week.

A similar attendance bonus had been agreed upon for the "testers, checkers, packers, and sorters (CIO)."

The parties jointly submitted a Form 10 for both bonuses.

On July 27, 1944, the Third Regional War Labor Board notified the parties that the attendance bonus for the "miscellaneous department" had been denied (3-12250). On July 28, 1944, the Third Regional War Labor Board approved the attendance bonus for the testers, checkers, packers, and sorters (3-10316), retroactive to Sept. 1, 1943.

On Sept. 19, 1944, the Third Regional War Labor Board approved a second application for an attendance bonus for the miscellaneous department, (3-26260), retroactive to Sept. 1, 1943. The Board order specified that the attendance bonus was not applicable to the miscellaneous department beyond Aug. 31, 1944.

The attendance provision of the 1943-44 miscellaneous department agreement, p. 25, reads as follows:

"Subject to approval by the War Labor Board and for the life of this agreement, the following schedule of weekly bonuses shall apply to employees in the miscellaneous department whose weekly hours, including hours worked on Sunday, total forty-four (44) hours or more in a week * * *. It is understood by the parties that the weekly bonuses agreed to in this section are to be effective only when a Sunday is included in the workweek."

The union request is that the attendance bonus as provided in the 1943-44 contract be continued "without the proviso that Sundays must be included in the workweek in order that the same should be paid."

The union holds that it is just as important to pay the attendance bonus when there is no Sunday work as when it is necessary to work on Sundays.

Continuation of the bonus during 1944-45 for the miscellaneous department will [help] these workers collect what the testers, checkers, packers, and sorters have already received.

Company's Position

1. The company agreed to inclusion of the attendance bonus in the 1943-44 contract for two reasons:

(a) Absenteeism was a real problem at that time.

(b) A similar bonus had been agreed to by the company with the CIO union (testers, checkers, packers, and sorters) at the Millville plant.

2. When the attendance bonus was agreed to, the plant was operating seven days weekly. It is now operating only six days. "The attendance bonus as originally conceived is, therefore, inoperative, and, under the circumstances, the company is unwilling to continue it."

3. The company's experience with attendance bonus bears out the judgment of the National War Labor Board that financial means of curbing absenteeism are usually not satisfactory.

Discussion and Recommendations

The panel recommends discontinuance of the attendance bonus provision for the following reasons: (1) The National War Labor Board has denied the attendance bonus "except under special circumstances" (Statesville Cotton Mills Co., 11 War Lab. Rep. 606; also 22 War Lab. Rep. 43). (2) The Third Regional War Labor Board, in its release of Apr. 6, 1944, concerning fringe issues [15 War Lab. Rep. LXIII; WCDS 259], states that it continues to disapprove plant-wide absentee

bonuses. (3) To apply the bonus, originally provided for a seven-day week, to a six-day week would open the way for any company working six days to ask for this bonus. The panel fails to see that a six-day week places an undue strain on the workers. (4) Three of the four other unions in this plant have not been given an attendance bonus. To continue it for the miscellaneous department, would create dissatisfaction. (5) In its directive order of Mar. 21, 1945, the Third Regional Board denied continuance of the attendance bonus for the testers, checkers, packers, and sorters at the Armstrong Company's Millville plant (111-11580-D).

[ED. NOTE: Issues 3(b) and 3(c), discussed in the panel report at this point, are omitted.]

Signed by William R. Buckwalter, representing the public; Ernest Muehleck, representing employers, subject to dissent on the recommendation on maintenance of membership and on the last sentence under Issue No. 2, check-off; and William Nicoll, representing labor, subject to dissent (with opinion) on all issues except No. 3 and 1(b), concurring in 1(b) if the Board refuses to grant a union shop.

EAST SIDE BUSSES, INC., ET AL.—

Decision of Regional Board XII (Seattle)

In re EAST SIDE BUSSES, INCORPORATED, TUALATIN VALLEY STAGES, INCORPORATED, and PORTLAND STAGES, INCORPORATED [Portland, Ore.] *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, DIVISION 1055 (AFL). Case No. 111-12585-D, July 9, 1945.

Amending 25 War Lab. Rep. 181.

WAGES—GOING WAGE RATES—Suburban transit company—Application of transit policy

Rate of suburban bus drivers is raised from $1.00 to $1.05 per hour since (1) under the national transit policy suburban rates may be raised to next five-cent interval below average transit rate in area in April 1944, (2) as result of retroactive adjustment of rate of dominant property from $1.05 to $1.08, average rate effective in area on Apr. 1, 1944, was above rather than below $1.05, and (3) wartime changes in conditions justify reduction in differential between suburban and dominant rates. Prior denial of increase, which was based on assumption that dominant company's April 1944 rate was $1.05, is therefore reversed.

For other rulings see Index-Digest 250.967 in this or other volumes.

Majority decision of Regional Board XII (Seattle) amending prior order. Opinion by George Bernard Noble, chairman. Public members concurring: Harold A. Seering and Raymond B. Walker. Labor members concurring: Neil V. Pardo, Charles W. Vahlbusch, and John M. Fox. Employer members dissenting: M. J. Muckey, George W. Farnsworth, and Gerry Weaver.

Supplemental Directive Order No. I

The Twelfth Regional War Labor Board, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

All clauses and provisions of the directive order issued in this matter May 18, 1945 [25 War Lab. Rep. No. 7, 18], with any subsequent additions or corrections thereto, are herewith affirmed and reordered except in so far as the same may be modified, corrected, or changed in the statements below.

Wages

Sec. VI of the directive order of May 18, 1945, stating, "The requests for changes in the existing basic hourly rates for drivers are denied," is vacated, and the basic rate for drivers is hereby increased to $1.05 per hour.

Any person receiving more than the rate provided herein for his job classification shall not be increased or decreased by reason of this directive order.

Any petition for review already filed with respect to a previous directive order issued in this matter, and any answer to such a petition, shall be considered as withdrawn unless the parties otherwise indicate in writing within the seven-day appeal period.

Retroactivity

Any employee coming within the terms of the foregoing who has either quit or been discharged since Oct. 1, 1944, shall receive the amount of the increase for his classification up to the date upon which his employment with the company terminated.

The company and the union shall promptly send a joint letter to each such employee at his last known address, advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment if good cause is shown for the application being delayed beyond the 60 days. Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States.

The foregoing paragraph, relating to retroactive pay, shall not apply to any employee not on the company's payroll for a total of 15 days during the period of retroactivity provided for herein.

As required by Executive Orders No. 9250 and 9328, as supplemented by the Directive of May 12, 1943 [8 War Lab. Rep. XIV; WCDS 571, Sec. I of this order shall, in any event, become effective only upon determination by the Office of Price Administration that the wage increase ordered in that section will not require any change in price ceiling or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action. The parties are advised, as provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," that this order is subject to review by the National War Labor Board at any time on its own motion.

Nothing in this order shall be construed as approving any wage or salary adjustment made prior to this order which required approval of the National War Labor Board unless such approval has heretofore been obtained.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect eight days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board or a petition for reconsideration is filed with the Twelfth Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review or petition for reconsideration unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, subject to the provisions of the price relief clause; and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Opinion of the Board

July 7, 1945

WAGE INCREASE

NOBLE, Public Member:—The Twelfth Regional War Labor Board has reconsidered its previous decision in this case and has approved a rate of $1.05 for drivers employed by the three companies involved, industry members dissenting. This modifies the previous award which denied any increase, leaving the rate for operators at $1.00. Both decisions rest on the application of the national transit policy to the case. Since the lines of the companies, parties to this case, are "tributary" to the "dominant" property in the city of Portland, national policy requires that a weighted average be taken of the operators' rates in the dominant property and all the companies tributary to Portland, as of April

1944. This figure is reduced downward to the nearest five-cent interval.

When the formula was originally applied in the subject case, a rate of $1.05 was used for the Portland Traction Company (the dominant property) on the presumption that $1.05 was the rate in effect on Apr. 1, 1944. Applying the national policy to the dominant and tributary lines on this basis, no increase was possible.

On further checking, the majority finds that the effective rate of the Portland Traction Company on Apr. 1, 1944, was actually $1.08 because of the fact that the contract was in negotiation, and a subsequent ruling in a voluntary application awarded $1.08, retroactive to Apr. 1, 1944. This rate of $1.08 was approved on the basis of previously existing transit policy. Using the $1.08 rate, which the majority feels is the appropriate rate, the resulting average is $1.071, and, under national policy, that figure is properly reduced to $1.05, which is the award of the majority in this case. This rate still preserves a differential between these properties and the Portland Traction Company and at the same time recognizes the fact that wartime transportation conditions have made these properties more nearly comparable to the metropolitan line, justifying the narrowing of the differential.

REYNOLDS METAL CO., INC.—

Decision of Regional Board V (Cleveland)

In re REYNOLDS METAL COMPANY, INCORPORATED [Louisville, Ky.] *and* INTERNATIONAL COUNCIL ALUMINUM WORKERS UNION, LOCALS 19388, 22958, 20440, 20168, 20533, and 23704 (AFL). Case No. 111-10661-HO [5-HO-1012], June 29, 1945.

Amending 24 Lab. Rep. 360.

SENIORITY—Temporary wartime employees

Board reverses prior order and grants union's request for discontinuance of clause of prior contract which provided that employees hired subsequent to Sept. 6, 1943, should be subject to replacement upon conclusion of war. Union contended, among other things, that retention of clause would permit favoritism in layoffs and that existing 30-day probationary period gives company adequate opportunity to weed out undesirables.

For other rulings see Index-Digest 155.290 in this or other volumes.

Majority decision of Regional Board V (Cleveland) amending prior order. Public members concurring: Frederick H. Bullen, chairman, and C. M. Finfrock. Public member dissenting on Par. 2: Harry J. Dworkin. Labor members concurring: J. W. Childs, Elmer F. Cope, and J. F. Schmid. Employer members dissenting on Par. 2: John Briggs, Lloyd Haney, and D. D. Reichow.

Directive Order

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, acting upon the union's petition for reconsideration of this Board's directive order in the above captioned case dated Apr. 26, 1945, [24 War Lab. Rep. 360] hereby decides:

1. Retroactivity

The wage adjustments directed in said order shall be retroactive to Sept. 6, 1944, the anniversary date of the contract between the parties.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's Resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

2. Temporary Employees

Art. XV of the contract between the parties dated Sept. 6, 1943, providing that "Any or all production employees hired by the company subsequent to Sept. 6, 1943, shall be subject to replacement upon the conclusion of the war" shall be deleted.

Such deletion shall not affect any action taken by the company prior to this date under this provision.

3. Affirmation of Previous Directive

This Board's directive order dated Apr. 26, 1945, is affirmed in all other respects.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect eight (8) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order effective immediately.

SUPERIOR PATTERN CO.—

Decision of Regional Board V (Cleveland)

In re SUPERIOR PATTERN COMPANY [Cincinnati, Ohio] *and* PATTERN MAKERS LEAGUE OF NORTH AMERICA, DISTRICT 1 (AFL). Case No. 111-12353-D [5-D-1271], June 7, 1945.

WAGE ADJUSTMENTS — Retroactive date—First contract

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB.

For other rulings see Index-Digest 225.338 and 225.343 in this or other volumes.

JOB PROTECTION—Hour reduction before layoffs

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period.

For other rulings see Index-Digest 77.260 and 65.508 in this or other volumes.

COLLECTIVE BARGAINING—Definition of bargaining unit

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers.

For other rulings see Index-Digest 32.857 and 82.301 in this or other volumes.

Majority decision of Regional Board V (Cleveland) amending recommendations of panel. Dissenting opinion by: Herbert Buckman and Rudolf Homan, employer members.

Decision on Pars. 1, 2, 3, 4 (a), and (b)—Public members concurring: C. M. Finfrock and Harry J. Dworkin. Public member dissenting: O. W. L. Coffin. Labor members concurring: J. W. Childs, David Kanes, and John E. McKiernan. Employer members dissenting on Pars. 1, 2, and 4(b): Joseph A. Voss, R. S. Livingston, and Herbert C. Buckman.

Decision on Pars 4 (c), (d), 5, 6, and 7—Public members concurring: O. W. L. Coffin and Harry Dworkin. Labor members dissenting on Pars. 4(c), (d), and 5(d): J. W. Childs and John E. McKiernan. Employer members dissenting on Par. 7: Joseph A. Voss and Herbert C. Buckman.

Decision on Par. 8—Public members concurring: Frederick H. Bullen, chairman, and O. W. L. Coffin. Labor member concurring: J. W. Childs. Labor member dissenting: John Schmid. Employer member concurring: John Briggs. Employer member dissenting: Herbert C. Buckman.

Directive Order

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Con-

gress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Definition of Collective Bargaining Unit

The employees classified as helpers shall be included within the bargaining unit if they are doing approximately the work of patternmakers or patternmaker apprentices, according to the certification of the National Labor Relations Board.

2. Maintenance of Membership

"All employees who, on June 22, 1945, are members of the Union in good standing, in accordance with its constitution and by-laws, and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties.

"Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision [12 War Lab. Rep. XXVIII; WCDS 321], in the absence of some other procedure agreed to by the parties."

3. Overtime And Workweek

The following language shall be incorporated into the labor contract:

"Art. 3. (a) Any time worked in excess of eight hours in any one day shall be paid for at the rate of time and one-half.

"(b) Work performed on Sundays and the following holidays shall be paid for at the rate of doubletime, subject to control of Executive Order 9240 [8 War Lab. Rep. XXVII, WCDS 20] as presently written or later amended: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

"(c) As far as practicable, overtime shall be distributed equally among the employees in the shop. Any employee called to work or permitted to come to work without having been properly notified that work will not be available shall receive a minimum of three hours' pay at his regular rate for work on such shift.

"(d) Upon the rescission of Executive Order 9240, the subject of overtime shall be open for collective bargaining and the parties shall arrange a meeting within 30 days of the date of said rescission of said Executive Order for the purpose of negotiating such terms as may be agreed upon."

4. Seniority

(a) The following clause to govern seniority shall be included under Art. VI of the contract to be executed by the parties:

"Seniority shall govern increases and reduction in all personnel. It is understood and agreed that, in all cases of increase or decrease of forces, length of service shall be the determining factor, providing the employee has the ability to perform the work available. Any complaint regarding administration of this provision shall be handled as provided in the Grievance Procedure, Art. IX."

(b) The following paragraph shall govern layoffs:

"There shall be no layoffs as long as there is sufficient work to provide the employees with at least twenty-four (24) hours' work per pay period on the average."

(c) The following shall govern the employment of veterans:

"Any employee who is called into active service or who, in time of war, volunteers in the armed forces of the United States shall be given a leave of absence for and will accumulate seniority during such period of service and, upon the termination of such service, shall be reemployed provided he has not been dishonorably discharged and is physically able to do available work in line with his seniority at the current rate for such work and provided that he reports for work within ninety (90) days of the date of such discharge."

(d) The request of the union for layoff pay is denied.

5. Wages and Quota of Apprentices

(a) The company shall establish and maintain only one classification of patternmakers.

(b) The union's request for a general wage increase is denied. However, in the event any existing rates are below the sound and tested rates established by this Board for the occupational classification involved and for the appropriate area, they may be raised to the sound and tested rates. Increases in wages within the rate range shall be determined by General Order 31 [23 War Lab. Rep. No. 1, IV; WCDS 143].

(c) The company shall follow the established custom of the Pattern Makers League of having one apprentice for a department and one for each eight journeymen pattern makers.

6. Vacations

All employees with one year or more, but less than five years, of service shall receive one week's vacation with pay. Employees with five years or more of service shall receive two weeks' vacation with pay. Vacation pay for one week shall be computed on the particular employee's average straight-time hourly earnings for the average number of hours in the plant's scheduled workweek provided that said hours are not less than 40 nor more than 48.

7. Strikes and Lockouts

With respect to this issue, the Board finds that the union, as a party to this contract, is a party to National no-strike pledge.

8. Retroactivity

The date of retroactivity shall be the date the union first presented specific demands to the company subsequent to certification by the National Labor Relations Board on Sept. 12, 1944, of the Pattern Makers League of North America as the collective bargaining agent for the employees involved.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's Resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree, provided that the 15-day period referred to in Par. 2 above shall be deemed to run from the date of this order.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order effective immediately.

V. Item 8 of this directive order, establishing a retroactive date for any wage increases or adjustments granted, shall not operate to excuse failure to have secured approval for any wage increases or adjustments placed in effect prior to this order, where such adjustments required approval.

Dissenting Opinion of Employer Members

June 5, 1945

RETROACTIVITY

BUCKMAN and HOMAN, Employer Members:—The undersigned industry members dissent from that part of the directive order whereby the majority have ordered a retroactive date for wage increases to be established prior to the certification of the case to the National War Labor Board. Inasmuch as this was a new contract with a newly certified union, such a directive is contrary to the established policy of the National War Labor Board as stated in the memorandum to the regions, dated Aug. 16, 1943 [11 War Lab. Rep. XXXIX; WCDS 394], which is to use the date of certification to the War Labor Board.

The union was certified by the National Labor Relations Board as the collective bargaining agent on Sept. 12, 1944. The date of certification of the dispute to the National War Labor Board was Dec. 21, 1944. As nearly as could be determined, the first date when negotiations between the union and the company commenced was Oct. 17 and, according to the union's comments, "this is a first contract, and an honest effort was made by both parties to reach an agreement." However, the union requested that wage increases be made retroactive to the date of certification by the NLRB. The company, on the other hand, contended that there be no allowance of retroactivity since the entire purpose of retroactivity of collective bargaining agreements is to prevent lapses in the collective bargaining relationship. Where there has been no previous collective bargaining, no lapse can occur and, therefore, retroactivity should not be considered. The action of the majority of the Board disregards both requests.

The action taken by the majority of the Board is recorded as follows:

"Motion was made and carried that, because of the National Labor Relations Board's certification of the Pattern Makers' League as a collective bargaining agent on Sept. 12, 1944, retroactivity in this case shall be the date upon on which the union first presented to the company its specific demands subsequent to National Labor Relations Board's certification. Messrs. Briggs, Bullen, Coffin, Childs for the motion. Messrs. Schmidt, Buckman against the motion."

Although the industry members appreciate the justice in many cases of granting wage increases to some retroactive date, there have been a large number of cases in which employers have been severely penalized by the policy of the Board. Particularly has this been true where wage demands were not made until long after negotiations had started, sometimes not until the hearing before the panel. At other times the demands of the union have been substantially changed between those originally made and the final request. However, the policy of the Board has been to go back to the date of certification to the National War Labor Board when first contracts with new unions or newly certified unions were involved. Although this has been hardship enough, the action of the Board in the instant case, if adopted as a general policy, would penalize the employer even further. Why would it not be just as logical, in appropriate cases, to refuse retroactivity entirely to a union which rushes to obtain certification of a dispute to the NWLB without pursuing collective bargaining in good faith? See Midland Steel Products Company, Case No. 85; 1 War Lab. Rep. 247.

Report and Recommendations of the Panel

PARTIES

The Superior Pattern Works is an Ohio corporation; is located at 1116 Straight Street, Cincinnati, O., where it operates its one and only plant.

The company is engaged in the manufacture of patterns, both wood and metal, for iron and steel castings. It employs about 38 men in its shop who are involved in this dispute.

The union involved is a local of the Pattern Makers League of North America, District No. 1 (AFL), which union was certified subsequent to an election (Certification was made Sept. 12, 1944). Subsequent to said certification by the National Labor Relations Board, negotiations were opened and, after several meetings, agreements were reached on all matters except those mentioned hereinabove.

There had been no union in this plant prior to the forming of the union which negotiated the present sought contract.

The certification of this union as the bargaining agent for these employees to the National War Labor Board was dated Nov. 21, 1944.

ISSUES

1. Definition of Collective Bargaining Unit

Subsequent to the matter having been determined by the National Labor Relations Board it was discovered that this company has, among its shop employees, a class of workers which they designate as "helpers." The union contends that these helpers should be included in the employees for whom it is acting, while the company argues that the bargaining unit should be confined to those mentioned in the certification by the National Labor Relations Board, to wit, pattern makers and pattern maker apprentices.

The panel does not feel it has authority to designate or describe what persons or jobs should be included in or excluded from the bargaining unit. That is the prerogative of the National Labor Relations Board. However, we make this observation from the information of the Board: If the work performed by these so-called "helpers" comes within the definition of pattern makers or pattern makers' apprentices as submitted by the union (which definition was not contested by the employer), and the word "helpers" to the average person is synonymous with apprentices, then the proper legal authority could include such persons or jobs in the bargaining unit.

The public and labor member vote in favor of the foregoing expression, while the industry member dissents, his dissent being based on the statement by the employer that these helpers are neither pattern makers or pattern makers' apprentices.

2. Union Security

The union has requested maintenance of membership without any escape clause; they have not asked for the check-off. The company has not offered check-off, so on check-off both parties agree, but the company has contested the union's application for maintenance of membership. The majority of the panel, to wit, labor and public, feel that, under the circumstances in this case, the standard War Labor Board "maintenance of membership with escape clause" should be written into this contract, and they so recommend. To this the industry member dissents.

The public member wants to again state his position on the question of maintenance of membership. We feel, as we always have, namely: That no person or government has the legal right or authority to compel an employer or an employee to make membership or nonmembership in a labor organization necessary to employment.

We have on many occasions in our private practice advised maintenance-of-membership clauses in contracts being negotiated and even closed shop with check-off, but those were purely voluntary matters, and there was no element of compulsion in them.

We wish to state our position because we have never yet joined in a recommendation for maintenance of membership until this case, and we only do so now because it is an announced policy of the Board to grant this in cases of this kind, and we would be somewhat in the position of a nisi prius court continually differing with the appellate court were we to follow our own personal convictions in this matter while sitting as a member of a panel.

3. Overtime and Workweek

During the hearing, the parties entered upon an agreement as appears on pp. 42, 43, and 44 of the transcript of the testimony which is as follows:

"Overtime and Workweek. Art. 3 (a). Any time worked in excess of eight hours in any one day shall be paid for at the rate of time and one-half.

"(b) Work performed on Sundays and the following holidays shall be paid for at the rate of doubletime: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

"(c) As far as practicable, overtime shall be distributed equally among the employees in the shop. Any employee called to work or permitted to come to work without having been properly notified that work will not be available shall receive a minimum of three hours' pay at his regular rate for work on such shift.

"(d) Upon the rescission of Executive Order 9240, the subject of overtime shall be open for collective bargaining, and the parties shall arrange a meeting within 30 days of the date of said rescission of said Executive Order for the purpose of negotiating such terms as may be agreed upon."

In view of the agreement of the parties during the hearing, the panel unanimously endorses such agreement.

4. Seniority

There were two matters in dispute under this title, the first having to do with Art. 6, Par. (h) of the proposed

contract between the parties and concerned the use of the words "dishonorably discharged" or "honorably discharged." The panel is of the opinion that said Par. (h) of Art. 6 should read as follows:

"Any employee who is called into active service or who, in time of war, volunteers in the armed forces of the United States shall be given a leave of absence for and will accumulate seniority during such period of service and, upon the termination of such service, shall be reemployed provided he has not been dishonorably discharged and is physically able to do available work in line with his seniority at the current rate for such work and provided that he reports for work within ninety (90) days of the date of such discharge."

The industry and public member agree and recommend that Art. V, Par. A, should read as follows:

"There shall be no layoffs as long as there is sufficient work to provide the employees with seniority with at least thirty-two (32) hours' work per pay period week on averages."

The labor member dissents for the reasons advanced by the union and as shown in the transcript of the proceedings.

The final matter in dispute under the above title of Seniority referred to the wording of Art. VI, Par. A, which Art. VI, Par. A should read as follows:

"Seniority shall govern increases and reduction in personnel. It is understood and agreed that, in all cases of increase or decrease of forces, length of service shall be the determining factor when qualifications for the work available are equal. Any complaint regarding the administration of this provision shall be handled as provided in the grievance procedure, Art. IX."

On the union's request for layoff pay as set out in the second sentence of Art. V, Par. A, as submitted in the union contract, the industry and public member voted in the negative or against the inclusion of such a provision, and the labor member dissents for the same reasons as offered by the union at the panel hearing and as recorded in the transcript of the proceedings.

As to the contention under Art. VI, Par. G, of the contract as submitted by the union (which compares to Art. V, Par. F, as submitted by the company), the panel is unanimously of the opinion that said Art. VI, Par. G, under seniority should read as follows:

"The employees covered by this agreement will have their names removed from the seniority list if they have not worked for twelve (12) months under this agreement, if they have quit, if they have been discharged, if they have overstayed a leave of absence, or if they have failed to report for work when properly notified within three working days or longer if mutually agreed upon in each particular case."

The foregoing Art. VI, Par. G, under the contract as submitted by the union was agreed to by the parties as per the record.

5. Wages and Quota of Apprentices

Discussing the first item under this issue, to wit, wages, the panel unanimously agrees and so recommends that there be only one classification of pattern makers and that the request of the company for two classifications be not granted. The panel is of the opinion that a rate range should be established and feels, and so recommends, that the range should be from $1.25 per hour minimum to and including $1.50 per hour maximum and recommends that each and every pattern maker in the employ of this employer shall receive not less than 8 cents per hour increase in wages except that no one shall receive an increase in wages which would place him above the maximum recommended by this panel. In other words, it is the sense of the panel that no raise shall be sufficient to raise the salaries over the maximum of $1.50 and that each and every employee shall receive, with that exception, not less than 8 cents per hour and that some may receive in excess of said 8 cents per hour as the Board or the parties determine.

The panel is unanimously of the opinion that the apprentice quota as at present established by custom in the Pattern Makers League, to wit, one apprentice for each department and one additional apprentice for each eight journeyman patternmakers, on the average, is fair and equitable and should exist in this shop, and the panel so recommends.

6. Vacations

Regarding vacations, the union proposed a vacation of 1 week for all employees who were in the employ of the company for 1 year immediately preceding the vacation period and a vacation of 2 weeks for all employees

who were in the employ of the employer for a period of 5 years immediately preceding said vacation period, while the company proposed a vacation of 1 week with 40 hours' pay for 1 year's service and 4 additional hours' pay for each year of service in excess of 5 up to and including the tenth year, making a maximum vacation of 60 hours with pay.

There was no dispute between the parties, as far as the panel recalls, concerning the time of vacations, which is no doubt due to the relatively small number of employees concerned.

The panel unanimously agrees and so recommends that the proposition, as submitted by the union, to wit, one week or two weeks' vacation based upon one year or five years' consecutive employment immediately preceding the vacation period respectively, should be adopted by this company and written into the contract between the employees and the employer, providing that said vacation pay shall be on a straight-time hourly basis and the number of hours to be paid for in said vacation pay shall be not less than 40 nor more than 48, but the vacation pay will be calculated on a basis of straight-time hourly earnings multiplied by the number of hours which the employee currently is working per week. As an example: The panel suggests that, if the worker is on a 48-hour week, he would receive 48 hours' pay if he has one to five years' service with the company and 96 hours' pay, if his length of service exceeds 5 years, with the understanding that this panel is not attempting to include night-shift differentials or overtime pay.

7. Strikes and Lockouts

The panel unanimously recommends that the agreement shall contain a clause thus: "There shall be no strikes or lockouts during the term of this agreement."

8. Retroactivity

The panel is of the unanimous opinion and so recommends that any and all matters such as wages, hours, and the like covered in this matter pending before this panel and the Board shall be retroactive to the date on which this matter was certified to the National War Labor Board, to wit, Nov. 21, 1944 (See Record, p. 151).

The panel wishes formally to express its sincere appreciation to Mr. Goodwin B. Auerbach, Board representative.

ATLANTIC STEEL CASTINGS CO.—

Decision of Regional Board III (Philadelphia)

In re ATLANTIC STEEL CASTINGS COMPANY [Chester and Crum Lynne, Pa.] *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 48 (CIO). Case No. 111-14454-D, July 18, 1945.

WAGE ADJUSTMENTS — Voluntary adjustment of rate range—Compulsory extension to individual's rates

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board.

For other rulings see Index-Digest 225.945 in this or other volumes.

Majority decision of Regional Board III (Philadelphia) affirming recommendations of panel. Public members concurring: William N. Loucks and Frank C. Pierson. Labor members concurring: Hary Block and Lionel D. Brodeur. Employer members dissenting with opinion: John E. Means and J. W. Trauernicht.

Directive Order

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. (1) All employees whose wage or salary rates are below the minimum of the wage or salary rate ranges approved by the Regional War Labor Board in Case No. 3-30927, shall be

increased to the minimum of such ranges.

(2) The company shall grant wage or salary increases to employees within the approved wage or salary ranges in order to maintain the intra-range relationships in effect prior to the approval of the new rate ranges.

(3) Wage increases directed under Pars. (1) and (2) above shall not be offset against the merit or length-of-service increases permissible under General Order No. 31 [23 War Lab. Rep. No. 1, IV; WCDS 143].

The increases specified above have been ordered by the Board without relationship to any calculations of their total amount made either by the panel or by the parties involved in this dispute.

(4) The wage adjustments ordered in the foregoing paragraphs shall be paid retroactively to Aug. 2, 1944. The procedure to be followed in making retroactive payment to those employees who have either quit or been discharged shall be in accordance with the attached copy of the National Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 000].

II. This order shall stand confirmed as the order of the National War Labor Board unless, within 14 days from the date hereof, a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

III. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

IV. If the company intends to base a request for price relief upon any of the terms of this order, it shall, within 15 days of the date of the issuance of this order, notify this Board and the union of the date on which it has filed application with the Office of Price Administration for increases in price ceilings of its products. If it has filed, or does file, such application within 15 days of the date of the issuance of this order, then, as required by Executive Orders No. 9250 and 9328 as supplemented by the directive of May 12, 1943, the wage increases ordered herein shall become effective only (1) upon determination by the Office of Price Administration that such wage increases will not require any change in price ceilings or, (2) if the Office of Price Administration rules that increases in price ceilings are required, upon approval by the Director of Economic Stabilization. The parties will be promptly notified of the action of the Office of Price Administration, and of the Director of Economic Stabilization.

V. As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Dissenting Opinion of Employer Members

RATE RANGES

MEANS and TRAUERNICHT, Employer Members:—The dispute in this case is about what the company and the union had agreed upon when they submitted a joint Form 10 application in November 1944, for the approval of new rate ranges.

When the parties prepared the Form 10, the data submitted with it to justify its approval indicated that the maximum general over-all increase was .3066 cent per hour. (There are some small discrepancies in the various exhibits due to payrolls and number of employees. The panel report states the increase to be .314 cent). The general over-all increase was based on the difference between the weighted average hourly earnings as of Aug. 2, 1944, and the mid-point of the ranges for which approval was requested. On the basis of this information, approval was granted, and with the approval the parties were advised of the increases immediately mandatory and those which were permissible under General Order No. 31 [23 War Lab. Rep. No. 1, IV; WCDS 143].

After approval, the company was ready to make the increases up to the minimum of the new brackets, which was mandatory, and also to make intra-range increases, which were permissible, but only up to the mid-points of the new brackets on the average. There was no limitation on these intra-range increases in the Board's approval of the application.

The union claimed that the company had agreed, before the Form 10

was signed, to make intra-range increases, if permission was given by the Board, to keep the intra-range relationships existing in the Aug. 2 payroll. The company denies ever having made such an agreement, and the panel, after a full hearing in the question, did not find that such an agreement had been made. No request is made in the Form 10 to increase any individual rate or rates above the mid-point of the new ranges, and the amount of the general increase in the Form 10 was determined from the mid-points of the ranges. There is nothing in the material submitted with the Form 10, nor is there anything in the Board's approval of it which in any way suggests or implies that the parties had agreed to increase average rates above the mid-points of the new ranges. Any general increase, on the information supplied, was limited to the mid-points of the new ranges. While the Board's order gave permission for such increases, there is no evidence that it did so to enable the company to preserve in an unmodified form the relative position of each employee in the new ranges as he had in the old ranges.

The order now issued by the Board extends the Form 10 approval to make mandatory the placement of each individual in the same relative position in the new ranges as he had in the old ranges. In many instances wage increases must be made of ten cents and 15 cents an hour. The general increase is about 6 cents per hour. The order is contrary to the established policy of the Board to hold the average increase to the mid-point of the new ranges, which is the sound and tested going rate. The agreement between the parties, as evidenced in the Form 10 which they jointly prepared and executed, cannot be interpreted to warrant this obligation being forced upon the company.

Report and Recommendations of the Panel

May 29, 1945

The parties to this dispute are the Atlantic Steel Castings Company, located in Chester and Crum Lynne, Pa. (hereinafter referred to as the company) and the Industrial Union of Marine and Shipbuilding Workers of America, Local No. 48, (CIO) (hereinafter referred to as the union).

The company manufactures steel castings; approximately 98 per cent of its production is on contracts with the Army, Navy, and Maritime Commission.

The union has been the collective bargaining agent since Aug. 2, 1943. Approximately 715 workers are included in the bargaining unit. During the negotiations for the 1944-45 contract the parties agreed upon certain adjustments in the minima and maxima of the existing rate ranges for 71 classifications involving approximately 712 employees. This was submitted on a Form 10 application (3-30927), signed on Nov. 22, 1944. On Jan. 26, 1945, the Regional Board approved the joint Form 10, retroactive to Aug. 2, 1944, as submitted by the parties. Attached to and part of the Board's ruling was the statement "Use of Salary or Wage Rate Ranges" which stated, inter alia:

ADJUSTMENTS WITHIN RANGES

A. All employees below the minimum of the approved wage or salary ranges must be brought up to the minimum of such ranges if this approved schedule is to be made effective, and such adjustments must be made within a reasonable time following the date of this ruling. Increases given to effectuate the placement of such persons at these range minima need not be offset against the allowance as set forth in General Order No. 31.

B. It is further permissible to grant immediate increases to other employees within the ranges approved to the extent necessary to preserve intra-range relationships.

C. The above (A and B) increases are the only increases which may be made under this ruling and yet not count against the permissible merit or length-of-service allowance under General Order No. 31. All increases made under A and B must be made at the same time, and all must be given the same effective date, which date must not be prior to the effective date of the War Labor Board ruling.

Subsequently, the parties to the Form 10 disagreed regarding the manner of application of the Board's ruling with respect to the part noted as I. A, B, C, above. The union contended that the Board's statement, which was part of the ruling, provided that the placement of the employees in approved rate ranges should reflect the same relative position held in the existing rate ranges. The company contended, on the basis of the Board's statement, that Part 1 A must

be put into effect but part B was permissive.

Several meetings were held between the parties; no agreement being reached, Commissioner Addie Rush of the U. S. Conciliation Service was called. On Feb. 9, 1945, a meeting was held between the parties with the U. S. Conciliation Commissioner and John Seybold, Wage Stabilization Director. Mr. Seybold informed the parties that Part 1 B of the Board's ruling was permissible and further, if the disagreement of the parties was to be certified as a dispute case, his opinion was that the Board would order the intent of the Board's ruling at least to the extent of using the amount remaining after Part 1 A of the ruling was placed into effect.

Several other meetings between the parties followed, at which time various offers were made by the company, but agreement could not be reached.

Four work stoppages have occurred, due to the unrest caused by the disagreement of the parties.

Retroactivity to Aug. 2, 1944, was agreed upon by the parties in the joint Form 10 and is not in question in the subject case.

The instant case was certified by the U. S. Conciliation Service to the Board on Mar. 8, 1945.

ISSUE

The issue in question is the manner of applying the Board's ruling in a joint Form 10.

Union's Position

The union demands that the full intent of the Board's ruling on the joint Form 10, as stated in the ruling letter and statement "Use of Salary or Wage Rate Ranges" be applied in the instant case. This provides in part (1) that all employees below the minimum of the approved rate ranges be brought up to the minimum of such ranges, (2) that immediate increases to other employees within the approved ranges be made to preserve intra-range relationships, and (3) that the foregoing (1) and (2) shall not be offset against the permissible allowance under General Order No. 31.

The union contends that the issue in dispute is not one of proper interpretation of the Form 10. Rather, this is a dispute which involves how the approved rate ranges should be applied. The company does not contest the rate ranges but the manner in which they shall be applied. In effect, the company's contention regarding the application of the ranges would impose a ceiling of cost which will make it impossible to maintain the present intra-rate range relationships which the company agrees are proper.

It is contended that the company should be ordered to comply with a verbal agreement made prior to the submission of the Form 10, that all employees would be placed in the same relative position in the proposed and now approved rate ranges that they occupied in the existing rate ranges. This manner of application was clearly understood between the parties at the time the Form 10 was submitted. If this is not carried out, the entire present intra-plant wage relationship will be upset and result in confusion and unrest among the employees.

The union further argues that the various exhibits originally presented as part of the Form 10 (noted in subject brief as Union Special Exhibit, Union Exhibits A, B, Ca Cb, Cc, Cd) were in terms of the agreed upon rate ranges and substantiating data for such ranges. These exhibits were not intended to, nor do they, indicate the cost factor to the company which would result from the institution of the agreed upon rate ranges. The Board, in approving the Form 10, followed its normal procedure of acting upon the question before it, that of approvable rate ranges, and did not consider cost to the company.

Company's Position

The company proposes the following in terms of applying the Board's ruling on the joint Form 10: (1) All employees currently below the minimum of the approved rate ranges shall be brought up to the minimum of those ranges, (2) immediate increases shall be granted to other employees to preserve intra-range relationships, (3) an average of 3.14 cents per hour (the allowable amount indicated in the Form 10 approval) shall be spent in putting (1) and (2) into effect, and (4) the adjustments under (1) and (2) shall not be charged against merit increases made since Aug. 2, 1944, the agreed upon effective date of the Form 10.

The company contends that there was no verbal agreement between the parties as stated by the union. Moreover, the facts indicate that any adjustment made would be limited to the expenditure of an average of 3.14 cents per hour. In substantiating this, the company points to its cooperation in securing the maximum increase permissible as evidenced by the supporting data submitted in the Form 10

and their present position with respect to the manner of applying the Form 10 ruling. Further, the joint Exhibit A which was used by the parties in the preparation of the Form 10 substantiates the fact that it was understood between the parties that the cost to the company would be approximately an average of 3 cents per hour.

The company states that the placement of employees in the approved rate ranges would result in an average increase in excess of that approved by the Board. Further, the union's demand would prevent future merit and length-of-service increases to those employees who would be placed at the top of the new rate ranges.

Discussion and Recommendation

The parties agree that, in placing the Form 10 ruling into effect, all employees presently below the minimum of the approved rate ranges shall be brought up to the minimum of those ranges and that these adjustments shall not be offset against the permissible allowances under General Order No. 31 prior to Aug. 2, 1944, the effective date of the Form 10 ruling. The point remaining in dispute is the extent of any further adjustments to be made.

The parties argued at great length as to whether or not a verbal agreement had been reached regarding the manner in which the approved rate ranges were to be applied. They endeavored to substantiate their respective positions by statements from the participants at the hearing. However, the panel was unable to reach any conclusive determination as to whether any alleged agreement was made. Further, the panel does not believe that this matter can be properly determined in the absence of any direct evidence.

It is the opinion of the panel that an equitable recommendation should be based upon an evaluation of the merits of the issue.

The Form 10 in question requested approval of varying increases in the minima and maxima of the existing rate ranges. The wage stabilization analysis found that the proposed rate ranges would result in an average increase of 3.14 cents per hour (this was derived by comparing the applicants' present weighted average hourly rates with the weighted midpoints of the proposed ranges). In support of this, the parties submitted data which indicated that the applicants' present rates were approximately three cents below minimum rates for the industry in the area (this was derived by comparing the applicants' present weighted average hourly rates with the minimum of established brackets together with tentative bracket minima based upon additional Bureau of Labor Statistics data secured by the parties). The company's argument that the total of all adjustments to be made should be limited to a 3.14-cent average hourly cost is based upon the foregoing.

Neither the data submitted in the Form 10 nor the wage stabilization analysis refers to the actual cost to the company of instituting the proposed rate ranges. During the hearing, the parties disagreed regarding the average hourly cost to the company if the union's demand was to be granted. That is, that the employees be placed in the approved rate ranges in the same relative position as is currently in effect. The union contended (Exhibit "D" of the brief) that the cost was within the 3.14-cent average hourly limit, whereas the company argued that the cost would amount to from a five-cent to six-cent average increase per hour over the present payroll. Therefore, the panel requested that the parties jointly submit such information, in the belief that the issue might be resolved. This was submitted (Joint Exhibit B) and indicates that for 686 employees, the cost to the company to meet the union's demands would be an average of six cents per hour. However, there are discrepancies between the figures submitted in the Form 10 and those shown in the joint Exhibit B. These appear in the number of employees and accordingly in the total payroll amount. Further, the joint Exhibit B was made on the basis of individual's rates, whereas the Form 10 data is by job classification. As the issue in dispute concerns the Form 10, the panel believes that it is proper to consider primarily the information as submitted in the Form 10.

The panel does not question the wage stabilization method of analysis. However, since the applicants' request in the joint Form 10 was for approval of changes in existing rate ranges, it would appear proper to make comparisons on the basis of weighted rate range mid-points. This method appears proper since the Board's general approach to adjustments such as pertain in the instant case is in terms of rate ranges for classifications and

not rates for individuals. Based upon the figures shown in the Form 10, the weighted average mid-point of the present rate ranges is 84.16 cents per hour; the weighted average mid-point of the proposed rate ranges is 90.5 cents per hour. This indicates an average increase of 6.34 cents per hour over the applicants' present rates. On the basis of the same comparisons as made in the Form 10 with established bracket minima and the tentative bracket minima based upon additional Bureau of Labor Statistics data submitted by the parties, the weighted mid-points of present rate ranges are an average 6.24 cents below minimum rates. Accordingly, the panel majority finds no merit in the company's contention that the cost factor in the union's demand exceeds the approvable amount of increase.

The panel majority finds no validity in the company's argument that placing employees in the proposed rate ranges to maintain the existing intra-range relationships will prevent merit increases. This would only affect those few employees who are currently in that position and does not prevent the granting of future merit increases to other employees whose intra-range position would remain the same as at present.

Further, it is the panel majority's opinion that the union's demand is equitable. The request provides for the maintaining of existing intra-range relationships. For example, if three employees in an existing rate range are currently at the minimum, mid-point, and maximum of the range, these employees will occupy the same position in the new rate range. The union's request provides that those employees who, because of length of service in the plant or because of merit or both, have in the past received increases so that their position in a rate range gives them a wage rate higher than that of another employee shall not be reduced to a possible level where this relationship would be eliminated. In the absence of any indication to the contrary, the panel believes that the existing intra-range relationships are proper. The disturbance of these relationships will result in serious inequities and may cause considerable dissatisfaction among the employees.

It is noted that the Board's ruling included this statement: "It is further permissible to grant *immediate increases to other employees within the ranges approved, to the extent necessary to preserve intra-range relationships.*" (Italics supplied)

On the basis of the foregoing, the panel majority recommends that the union's request be granted.

SUMMARY

The panel majority (industry dissenting) recommends that:

1. All employees below the minimum of the rate ranges approved in the Form 10 (8-30927) shall be brought up to the minimum of such ranges.

2. Immediate increases to other employees within the approved ranges shall be made to maintain intra-range relationships in effect prior to the approved rate ranges.

3. The above increases shall not count against the permissible merit or length-of-service allowance under General Order No. 31.

4. The above adjustments shall be effective as of Aug. 2, 1944, in accordance with the agreement of the parties.

Signed by Herbert W. Rogers, representing the public; William R. Roberts, representing labor; and Joseph M. McVoy, representing the employers, subject to dissent, with opinion.

Dissenting Opinion of Employer Representative

WAGE INCREASES

This case was submitted to the panel as a dispute case referring to a directive of the Third Regional War Labor Board issued under date of Jan. 26 and directed to the above company as a result of the submission of a Form 10 submitted to this Board under date of Nov. 22, 1944.

Form 10 submitted was offered to the panel as evidence by both the union and company, and there was also a joint submission of the wage rate setup which was submitted with Form 10 as a basis for a request to the Board for a change of rate. This wage rate setup showed the classification, the number of men in such classification, the present range, the weighted average, the proposed range, and the total effect of the proposed range. This wage rate setup was prepared by the company and checked by the union and initialed and showed an increase of .03066 cents per hour. It was admitted by both the union and the company that this setup had been pre-

pared after a complete study of the tested and going rates of the district.

The Board ruled the rate changes should be effective as of Aug. 2, 1944. The portion of the ruling of the Board which has brought about the dispute relates to Sec. 1.

"A. All employees below the minimum of the approved wage or salary ranges must be brought up to the minimum of such ranges if this approved schedule is to be made effective, and such adjustments must be made within a reasonable time following the date of this ruling. Increases given to effectuate the placement of such persons at these range minima need not be offset against the allowance as set forth in General Order No. 31.

"B. It is further permissible to grant immediate increases to other employees within the ranges approved, to the extent necessary to preserve intra-range relationships.

"C. The above (A and B) increases are the only increases which may be made under this ruling and yet not count against the permissible merit or length-of-service allowance under General Order No. 31. All increases made under A and B must be made at the same time and all must be given the same effective date, which date must not be prior to the effective date of the War Labor Board ruling."

The dispute relates particularly to Par. B as is shown by the union's brief.

"The subject dispute originated as a Form 10 application for wage adjustment jointly entered into by the company and the union. This adjustment provided for new rate ranges which allowed an over-all average increase of .0314 cents. (This allowance was by virtue of the data accompanying the Form 10 in its submission to the Board, which clearly showed the .0314 cents as the basis for new ranges requested.) The .0314 cents average allowance was further substantiated in a later conference between the company, union, and Stabilization Director Seybold. This Form 10 was submitted to the Board Nov. 22, 1944. It was clearly understood between the company and the union at the time of the submission of this Form 10 that, should the Form be approved, all employees affected would be placed in the same position in the new rate range as they hold in the old. This understanding was reached verbally between Mr. Munson and Mr. Smith, acting for [the] company, and Mr. Minutella, Mr. Conyers, Mr. Cassell, and Mr. Trachtman, acting for [the] union. Now, however, the company denies any such agreement."

The figure of .0314-cent average allowance mentioned in this section of the union's brief is a modification by the War Labor Board's analyst of the figure .03066 cents, which was shown in the sheet accompanying the Form 10 submitted to the Board.

The company advised in its brief, and verbally to the panel, that it intended to follow Par. A of the ruling and that it also intended to comply with Par. B according to its interpretation of the same; namely, that they should correct intra-range differentials to the point it would, in effect, cause an over-all increase of .0314 cents but that it would not agree with the union's contention that they should place everyone in the same positions in the new range as they occupied in the old range. The panel requested the union and company to make a cooperative study of the Aug. 2, 1944, payroll to find out what average overall increase would be given the union if the union's interpretation of Par. B were followed. This study was made cooperatively, and the figures as submitted by the union and company showed that the overall increase would be .060 cents. The majority of the panel, Mr. Rogers and Mr. Roberts, voted to recommend to the Board that the desires of the union be met and that all of the men should be brought up to the minima of the new ranges in compliance with Par. A and that, with reference to Par. B, all others should be placed in the same positions in the new ranges that they had occupied in the old ranges.

To this your industrial member dissented on the ground that your Board had issued its ruling after the consideration of Form 10, as submitted jointly by the union and company on Nov. 22, 1944, and had intended to bring the weighted averages of the employees of this plant to the going and tested rate of the district but had not intended to grant an increase which would bring the weighted average of the wages of the members of this union to .0286 cents above the going and tested rate of this area.

Signed by Joseph M. McVoy, representing employers.

Supplementary Opinion of the Employer Representative

STATEMENT ON PROCEDURE

The above dispute case was heard on Apr. 5 and 12, and on Apr. 19 the industry member of the panel submitted his reasons for dissenting from the majority of the panel. We received the final report of the majority of the panel under date of May 26, and we should now like to further dissent relative to the paragraph beginning at the bottom of p. 4 and continuing on p. 5 reading as follows:

"The panel does not question the wage stabilization method of analysis. However, since the applicants' request in the joint Form 10 was for approval of changes in existing rate ranges, it would appear proper to make comparisons on the basis of weighted rate range mid-points. This method appears proper since the Board's general approach to adjustments such as pertain in the instant case is in terms of rate ranges for classifications and not rates for individuals. Based upon the figures shown in the Form 10, the weighted average mid-point of the present rate ranges is 84.16 cents per hour; the weighted average mid-point of the proposed rate ranges is 90.5 cents per hour. This indicates an average increase of 6.34 cents per hour over the applicants' present rates. On the basis of the same comparisons as made in the Form 10 with established bracket minima and the tentative bracket minima based upon additional Bureau of Labor Statistics data submitted by the parties, the weighted mid-points of present rate ranges are an average 6.24 cents below minimum rates. Accordingly, the panel majority finds no merit in the company's contention that the cost factor in the union's demand exceeds the approvable amount of increase."

This particular paragraph has no place in the decision of the panel relative to this case as nothing relating thereto was submitted in evidence by either of the disputing parties, and the majority of the panel had given its decision before they were aware of that which is now stated in this paragraph. Their decision, therefore, should not be based upon this paragraph at all. Your industry member has no way of knowing whether or not the facts stated in this paragraph are true or not as they were not in evidence, this calculation being made entirely after the adjournment of the panel.

Your industry member feels that this case is simply a dispute between the union and the company as to their understanding of the facts which were made a basis for the submission of Form 10 and that the duty of the panel was to try to determine what that understanding was. Since the above paragraph is foreign to any discussion which the company had with its union, it has no place in the decision of the majority of the panel. Your industry member also feels that this dispute should never have been given to a War Labor Board panel but rather should have been submitted to arbitration under Art. A in the agreement of the Atlantic Steel Castings Company and the Industrial Union of Marine and Shipbuilding Workers of America as this article clearly states the method for the handling of such matters as the above under arbitration, and it is your industry member's suggestion that this matter be referred back to the parties in dispute for arbitration.

Signed by Joseph M. McVoy, representing employer.

ELECTRIC CONTROLLER & MFG. CO.—

Decision of Regional Board V (Cleveland)

In re ELECTRIC CONTROLLER AND MANUFACTURING COMPANY [Cleveland, Ohio] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 735 (CIO). Case No. 111-11573-D [5-D-1184], June 28, 1945.

PREMIUM WAGE RATES — Second and third-shift premiums—Industry v. area practice

Employees of company manufacturing industrial electric motor controls are entitled to have present night-shift premiums of five cents for second and ten cents for third shift increased to ten cents for both second and third shifts on basis of Regional Board's resolution that night-shift differential of ten cents an hour shall be granted for plants in electrical industry. Company's contention that area practice must govern is rejected.

For other rulings see Index-Digest 140.589 in this or other volumes.

Majority decision of Regional Board V (Cleveland) amending recommendations of panel. Public members concurring: O.W.L. Coffin and A. C. Herold. Public member dissenting: C. M. Finfrock. Labor members concurring: Elmer Cope, John W. Wilse, and John Schmid. Employer members dissenting: C. Chester Small, Lloyd Haney, and Herbert Buckman.

Directive Order

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Night Shift Bonus

The company shall pay a bonus of 10 cents per hour for all work performed on the second and third shifts.

2. Affirmation of Previous Directive Order

This Board's interim directive order of June 11, 1945, is hereby affirmed in all respects.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order effective immediately.

Report and Recommendations of the Panel *

Feb. 28, 1945

PARTIES TO THE DISPUTE

Company

The company was established as The Electric Controller & Supply Co. on Aug. 23, 1899; and on Mar. 12, 1917, was incorporated as The Electric Controller & Manufacturing Co. It is engaged in the manufacture of industrial electric motor controls used principally by heavy industries, such as steel mills, ship yards, navy yards, aluminum, and brass and copper manufacturing plants, including controls for traveling cranes, rolling machines, ore handling equipment, electric brakes for hoists and other machinery, such as winches on various types of naval and cargo vessels, lifting magnets, and timers for welding machines. It operates one plant, located at 2700 East 79th Street, Cleveland, O. The products of the company in peacetime are essentially the same as in wartime, and practically all of its production is now in support of the war effort. The company now operates two shifts. About a year ago it concluded the operation of a third shift although now, when there is a bottleneck in production, it operates the machines concerned 24 hours per day. The regular schedule of shifts is 48 hours per week although some employees are working longer than eight hours in a day. At the present time the company employs approximately 500 employees, with approximately 250 in the bargaining unit. In peacetime its total employment is around 300 to 350. Twelve to 15 per cent of the present employment is females.

Union

The union was certified as the bargaining agency about July 5, 1944. Shortly thereafter a series of negotiating meetings followed, and many terms of the contract were agreed upon. On Sept. 21, 1944, the contract was signed, leaving 13 issues unresolved. The contract provides for maintenance of membership and has a duration of one year and to continue for similar periods unless notice of termination is given by either party.

* Ed. Note: Only that portion of the panel report relating to night-shift bonus is reproduced.

BACKGROUND

On Aug. 5, 1944, the aid of the United States Conciliation Service was secured, and the 13 issues were certified to the National War Labor Board on Oct. 18, 1944, and referred to the Regional War Labor Board on Oct. 27, 1944.

Informal hearings were held at Cleveland, O., on Dec. 1 and 5, 1944, and Jan. 16, 1945, and all parties present were given an opportunity to hear, be heard, and give and discuss oral testimony as well as information submitted in briefs.

ISSUES

The issues involved in this case are as follows:

1. Saturday overtime,
2. Sunday and holiday overtime,
3. Holiday pay,
4. Special overtime,
5. Wages,
6. Reopening clause,
7. Annual bonus,
8. Vacation plan,
9. Insurance program,
10. Night-shift bonus,
11. Arbitration clause,
12. Transfers, and
13. Equal pay for equal work.

[Ed. Note: Issues 1 through 9, discussed in the panel report at this point, are omitted.]

10. Night-Shift Bonus

Union's Position

The union requests that the following be ordered as Art. X of the contract:

"All workers working on night shifts shall receive ten cents per hour more than the hourly day rates."

The company is clearly in the electrical industry. According to a resolution of the Fifth Regional War Labor Board, a night-shift differential of 10 cents per hour shall be granted for plants in the electrical industry. Therefore, the union requests a night-shift bonus of 10 cents in this case.

Company's Position

The company now pays a bonus of five cents per hour for second-shift work and a bonus of 10 cents per hour for third-shift work. Both night shifts are eight-hour shifts, but there has not been a third shift in operation for a year. The union is demanding an increase in the bonus for second-shift work from five cents per hour to ten cents per hour.

In determining what night-shift bonus will be ordered, area practice governs. There are no decisions of the Board recognizing industry practice as controlling on this point. There can be no contention that practice in the Cleveland area calls for a night-shift bonus of more than five cents for the second shift. The Board has several times announced that a five-cent second-shift differential is in line with area practice.

Discussion

The premium now being paid by the company for night-shift work of five cents per hour for the second shift and ten cents an hour for the third shift is in line with the area practice. Since area practice is a major factor and there is an absence of a showing of extraordinary conditions necessitating an additional premium, the present practice of the company should not be disturbed.

Recommendation

Your panel, with the labor member dissenting, recommends that the request of the union be denied.

[Ed. Note: Issues 11 through 13, discussed in the panel report at this point, are omitted.]

Signed by Frank R. Uible, representing the public; George Leroux, representing employers, subject to dissent (with opinion) on Issues 4, 5, 6, 8, and 12; and Max Amdur, representing labor, subject to dissent (with opinion) on Issues 1, 2, 7, and 10.

Dissenting Opinion of Labor Representative *

[Ed. Note: The dissenting opinion on Issues 1, 2, and 7, discussed in the opinion at this point, is omitted.]

NIGHT-SHIFT BONUS

The labor member of the panel dissents from the denial of a 10-cent night-shift bonus on second and third shifts. The decision of the panel majority is based upon "area practice" only, according to the panel report. Thus the decision overlooks completely the matter of industry practice. The Fifth Regional Board has on numerous occasions stated that both area and industry practice govern in the matter of night-shift bonus. And the Board has further stated that, in the electrical industry, in-

* Ed. Note: Only that portion of the dissenting opinion relating to night-shift bonus is reproduced.

dustry practice shall govern and that therefore 10 cents per hour shall be the bonus for both second and third shifts. On the basis of industry practice, the request of the union should be granted.

Signed by Max Amdur, representing labor.

GENEST BROS., INC.—, DRAKE BAKERIES, INC.—

Decision of Regional Board I (Boston)

In re GENEST BROTHERS, INCORPORATED, and DRAKE BAKERIES, INCORPORATED [Manchester, N. H.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 686 (AFL). Case No. 111-14674-D, July 11, 1945.

WAGES—INEQUALITIES — Organized companies compared to unorganized firms—Application of industry and area rates

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus seven-per cent commission to $16 per week plus eight-per cent commission despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8-per cent commission. Higher rate is result of eight years' negotiation and present award, which is equal to rates paid by majority of industry prior to Trucking Commission's directive order fixing $18 and eight per cent for master contract, will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years.

For other rulings see Index-Digest 250.051 and 265.158 in this or other volumes.

Majority decision of Regional Board I (Boston) amending recommendations of panel. Opinion by Saul Wallen, chairman.

Decision in Genest case—Public members concurring: Saul Wallen and Kenneth M. Sills. Public member dissenting on Par. III: Samuel S. Stratton. Labor members dissenting on Pars. II and VII: Richard W. Gustin, Michael J. Walsh, and Jeremiah A. Linehan. Employer members dissenting on Pars. III and VI: Charles R. Gow, Clarence G. McDavitt, and Robert N. Haskell.

Decision in Drake case—Public members concurring: Saul Wallen and Kenneth M. Sills. Public member dissenting on Par. II: Samuel S. Strattom. Labor members concurring: Richard W. Gustin, Michael J. Walsh, and Jeremiah A. Linehan. Employer members dissenting on Pars. II and III: Charles R. Gow, Clarence G. McDavitt, and Robert N. Haskell.

Directive Order

The Regional War Labor Board for the First Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. Negotiated Terms

Those terms and conditions mutually agreed to by the parties during negotiations unless necessary Board approval has not been obtained.

II. Maintenance of Membership

The union is awarded the standard maintenance-of-membership provision as adopted by the National War Labor Board on Nov. 27, 1943 [12 War Lab. Rep. XXVIII; WCDS 321].

III. Wages

(a) The base rate shall be $16.00 a week with 8 per cent commission.

(b) The above wage adjustment shall be effective Jan. 2, 1945.

IV. Vacations

Employees with one year's service shall receive one week's vacation with pay; employees with over one but less than five years' service shall receive one week's vacation with pay; and employees with over five years' service shall receive two weeks' vacation with pay, a week's pay to consist

of a full pay and commissions. Eligibility dates shall be negotiated by the parties.

V. Recognition

Genest Bakeries, Inc., recognize the union as the collective bargaining representative of the employees involved.

VI. Holidays

No employee, except transport and special delivery, shall work on Sunday or on the days celebrated as the following named holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Armistice Day, Thanksgiving, and Christmas.

No delivery of bakery products shall be made to stores on Sundays or Holidays except on beach routes.

No sales employee shall be paid less than the weekly guarantee, and there shall be no reduction in base pay because of a holiday.

VII. Picket Line

The request of the union with respect to picket lines is denied.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The procedure to be followed in making the retroactive payment of those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Directive Order

July 11, 1945

The Regional War Labor Board for the First Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

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The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The procedure to be followed in making the retroactive payment of those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seek-

ing review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Signed by Saul Warren, Kenneth M. Sills, and Samuel J. Stratton, public members, Samuel J. Stratton, subject to dissent on Issue 2; Charles R. Gaw, Clarence G. McDavitt, and Robert N. Haskell, employer members; and Richard W. Gustin, Michael J. Walsh, and Jeremiah A. Lenehan, labor members.

Opinion of the Board

July 10, 1945

WAGES

WALLEN, Chairman:—This case involves a conflict between the principles of industry practice and area practice in wage setting. After eight years of organization and collective bargaining, the Teamsters' Union achieved a wage scale of $18.00 per week, plus 8 per cent commission in the baking industry comprising more than 80 companies in all of Connecticut, Rhode Island, and Massachusetts and in one company in Nashua, N. H. This constitutes a very large proportion of the total baking indusry in New England. The rate was established as the result of a directive order of the National War Labor Board's Trucking Commission [20 War Lab. Rep. 175].

Just prior to the National Board's order establishing this rate, most of these companies were paying $16.00 and 8 per cent commission.

The companies involved in the instant case have recently been organized and have just signed their first contract, leaving the wage issue for disposition by this Board. The majority of baking companies in their immediate area are not organized and are paying lower rates, and the companies here involved argue that to increase their rate to $18.00 plus 8 per cent would work an undue competitive hardship on them. This is especially burdensome if one considers that the union is demanding a two weeks' vacation after one year of service and payment for certain specified holidays.

The union's position may be summarized briefly as follows:

The bulk of the industry in New England is under the so-called master contract which calls for $18.00, plus 8 per cent. The union proposes to bring the few remaining companies in New England not covered under that contract, thus standardizing competitive conditions. It points out that a number of Massachusetts companies operate in southern New Hampshire where these companies are located and that some of the business of these firms is done in Massachusetts. The union rejects the companies' argument that the rural territories served makes costs higher and points out that many companies in Massachusetts and elsewhere, paying $18.00 and 8 per cent, also operate in rural territories. Furthermore, it argues that operation in rural territories places a greater workload on the men, for which a higher compensation should be paid. Finally, it states that its members will be deprived of the benefits of organization if they cannot be brought up to the standards created by voluntary collective bargaining in the largest part of the industry.

Our problem is to reconcile these two positions by rendering a decision which will be in accordance with the correct principles embodied in both. At the outset, it should be pointed out that the conditions achieved in the master contract came into being only after eight years of organization and the negotiation of successive contracts. One cannot, therefore, reasonably hold that the union in this case, where it is obtaining its first contract, is entitled to immediately secure all the conditions existing in the territories organized for a much longer time. Secondly, most of the competitors of these companies in New Hampshire are still unorganized and are paying lower rates; this adds weight to the argument that to at once place the full burden of the master contract on these companies would place them at a serious disadvantage.

On the other hand, as a result of signing the master contract, there has been a significant wage movement in most of the industry. With so much

of the industry under the master agreement, it is reasonable that some wage movement should take place in the remainder of the industry in New England. The present disparity in rates between the instant companies and the major portion of the industry under the master contract constitutes a gross inequity which should be eliminated to the greatest extent possible consistent with the Board's obligation to avoid placing undue competitive burdens on the companies involved.

In discussing this case, the minority argued that the sole consideration which should guide our decision is the rates being paid in the bakeries in the City of Manchester where these plants are located. The majority have taken the view, however, that, where so large a proportion of the industry in various parts of New England is paying a particular standardized rate regardless of the local labor market areas, it is appropriate to look to the industry rate as the yardstick by which a gross inequity is to be measured and to strive to eliminate the gross inequity to the greatest extent possible consistent with the principle of equity to both parties in the dispute.

Because of these considerations, the majority has deemed it appropriate to bring those companies up to the wage level that existed in the greater part of the baking industry, prior to the National Board's order in the master case. This would go part of the way toward eliminating the inequity in wage scales between the plants here involved and the major portion of the bakery industry in New England, but it would not, in this first contract, equalize the status of these newly organized companies operating in an unorganized territory with those companies that have been under contract for eight years and operating in organized territories. Furthermore, it would not raise the level of take-home pay to a point where it would have unstabilizing results in the Manchester area.

For these reasons, the majority have voted for a rate of $16.00 per week, plus 8 per cent commission. The majority has also voted for a vacation with pay in the case of Genest Brothers of one week for one year of service and two weeks after five years of service instead of two weeks for one year of service demanded by the union and found in the master agreement. This company now gives a paid vacation after two years of service. The vacation provision for the Drake Bakeries was not in dispute.

Report and Recommendations of the Panel

May 26, 1945

This case was certified to the National War Labor Board on Mar. 20, 1945. A hearing was held by the undersigned duly designated panel at Boston, Mass., on May 14, 1945, at which both parties were represented.

PARTIES TO THE DISPUTE

Companies

Genest Bros., Inc., a New Hampshire corporation, and Drake Bakeries, Inc., a Massachusetts corporation, hereinafter referred to as the "companies," are involved in the present dispute. The dispute involves the operations out of Manchester for the companies. Approximately 17 employees are involved at Genest Bros. and 2 at Drake's. These employees are engaged in selling wholesale bakery products.

Union

The Bakery and Sales Drivers' Union, Local 686, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), hereinafter referred to as the "union," represents the employees here involved for collective bargaining purposes.

BACKGROUND

This is the first contract between the parties, and separate contracts will be entered into by the companies and the union. Drake Bakeries, Inc., was not certified but submitted written notice to this office requesting to be included as a party. To this request the panel and the union agreed. Drake's agreed to be bound by the recommendations of the panel without waiving any of their rights under Board procedure. Genest disputed the fact that the union represented the employees, and discussion of this problem will be listed under issues.

ISSUES

The following are the issues involved:

(1) Recognition,
(2) Wages,
(3) Holidays,
(4) Vacations,
(5) Picket line, and
(6) Maintenance of membership.

Issues 2, 3, and 4 were certified to the Board, and Issues 2 and 3 involve Drake Bakeries.

1. Recognition

Genest Bros. stated that the union did not represent the employees involved as there never has been a certification by any Board with competent jurisdiction that any particular union represents the employees for collective bargaining purposes. Local 633 of Manchester, N. H., did attempt to organize the employees and called a strike in August 1944. As the company had perishable goods, it agreed to an election provided the employees would return to work immediately. The election was held under the supervision of the state labor commissioner, and the union received a majority of votes, but the men refused to return to work unless the nonunion members would immediately sign an application for membership. Later Local 633 of Manchester transferred these members to Local 686.

During the course of the hearing, this issue was discussed with the parties, and the company agreed that, if the union would submit cards signed by the majority of the employees indicating they wished to be represented by the union for collective bargaining purposes, the company would recognize the union as the collective bargaining representative of its employees. The panel has examined the cards submitted by the union, and these cards have also been offered for examination by the company. A majority of the employees have their names on these cards.

The panel will therefore recommend that this Board recognize the union as the collective bargaining representative for the employees here involved on the following grounds:

(1) The company and the union voluntarily agreed to an election under the supervision of the state labor commissioner of the State of New Hampshire to determine whether or not these employees wish to be represented by the union. According to the election, the employees indicated that they wished to be represented by the union.

(2) The company agreed that, if the union submitted cards for a majority of employees indicating their desire to have the union represent them, the company would deal with the union. These cards have been submitted, and 13 out of 16 employees have so indicated.

2. Wages

Present Practice

$16.00 per week plus 7 per cent commission on all sales.

Union's Position

The union requests the following clauses:

"(4) Wage scale.

"(a) Wholesale cake and bread salesmen shall receive $18.00 per week plus 8 per cent commission on all sales, but in no event shall any salesman receive less than $33.00 per week.

"(b) Spare men and helpers shall receive $28.00 per week. Spare men and helpers shall receive base pay and commissions when operating routes on full responsibility and for other than vacation relief.

"(c) Retail salesmen shall receive 80 cents plus 22 per cent commission on all monies collected up to $150.00 per week. When the amount of their collections reaches $150.00 and over per week they shall receive 22½ per cent back to the first dollar of all their collections made during the week, but in no event shall any retail salesmen receive less than $32.00 per week.

"This guarantee shall be applied against commissions and bonus earnings based on a four-week average. Any salesman whose collections are consistently under $145.00 per week shall be paid the guarantee of thirty-two ($32.00) per week, but at the end of each four-week period collections shall be averaged, and any commission due shall be paid. Any salesman whose collections are consistently over $145.00 per week shall receive his commission and bonus weekly.

"(d) Helpers or spare men who ride routes shall receive no less than $28.80 per week.

"Specialty men and route builders shall receive $32.80 for the first six months of service and specialty men and route builders with six months or more of service shall receive no less than $38.30 per week.

"Warehousemen shall receive $30.80 per week of 40 hours and time and one-half for all hours worked over 40 hours in any one week."

In support of its request, the union states that this clause was ordered by the National Board in Case No. 11-119-C which covered 82 companies in New England and several locals in the international union.

As a result of this decision, there are two sets of rates in the union area, one for Boston and the other in

Connecticut, Rhode Island, and the remainder of Massachusetts.

A uniform wage scale prevents employers from competing as a result of differences in the wage scales. The union intends to establish a uniform scale and uniform conditions throughout the New England area.

The concerns in the area have refused to come in on joint cases as they believe they will be able to defeat the union by coming in individually.

Company's Position

It is the position of the companies that the request of the union should be denied as employees have received more than 15 per cent since January 1941, as base pay has been increased from $14.00 per week plus 6 per cent commission to $16.00 per week plus 7 per cent commission. In addition, rates in the area are as follows: $16.00 per week plus 7 per cent commission, $14.00 per week plus 6 per cent commission, $14.00 per week plus 4 per cent commission, and 8 per cent straight commission.

Approximately 75 per cent of the companies' business is done in New Hampshire, 15 per cent in Vermont, and 10 per cent in Massachusetts. Competition is met from Vermont bakeries which pay $14.00 and 4 per cent so that the companies are under substantial competitive disadvantage. The area served is not as compact as that served by the Massachusetts, Connecticut, and Rhode Island bakeries who can therefore afford to pay higher wages. Costs in this area are higher due to freight charges.

Discussion

Members of this panel have sat on several cases involving the identical issue, and it is the opinion of the majority that this case must be examined on its merits, considering the National Board decision and area practice. The panel is fully aware that the National Board has acted upon this issue in Case No. 11-119-C. This rate is $18.00 plus 8 per cent commission. The National Board, after considering the New England Bakery Operators' Case No. 11-119-C, did not increase the commission rate but increased wholesale drivers $1.00 per week. The 8 per cent rate has been reached through collective bargaining.

The practice of the Regional Board in establishing brackets has been to establish rates for the various labor market areas and the same job may be paid varying rates in several areas. For example: Boston is generally the highest paying area in New England.

The area involved in the instant case is midway between the 18 and 8 per cent area and the 14 and 4 per cent area. Thus it appears to the panel that it must examine area rates in order to place this concern in its proper position.

The attached tables furnish the rates for six companies in the area. The rates of the concerns listed A, B, C, and D were obtained by a member of the staff of the Wage Stabilization Division after personal visits to all of the companies involved.* It may be noted that the rates vary from $6.00 to $18.00 per week, and the commissions vary from 6 per cent to 10 per cent per week and hours vary. Three concerns employing 40 drivers out of 86 pay $16.00 per week plus 7 per cent commission, and, if a bracket were established in accordance with the principles of the War Labor Board, it would apparently be set at that figure, and no increase would be allowable. The National Board did increase the base pay of the drivers involved by $1.00 per week in lieu of overtime, and it appears to a majority of the panel that $1.00 per week should be granted these employees. The panel will recommend that these employees should receive $17.00 per week plus 7 per cent commission.

3. Holidays

Union's Position

"No employee, except transport and special delivery, shall work on Sunday or on the days celebrated as the following named holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Armistice Day, Thanksgiving, and Christmas."

No delivery of bakery products shall be made to stores on Sundays or Holidays except on beach routes.

No sales employee shall be paid less than the weekly guarantee and there shall be no reduction in base pay because of a holiday."

In support of its request, the union states that this clause is uniform in the New England area and prevents employers from competing unfairly through worsening the working conditions of the employees involved. Lastly, the union states that it does not wish to place an unfair competitive burden upon this company, and, if the Board grants this clause, the union states the clause may be inop-

* Ed. Note: Tables are not reproduced.

erative until the other bakeries are signed up.

Company's Position

It is the position of the company that the placing of this clause in effect will weaken the company's competitive position. The present practice of the company is not to require drivers to work on legal holidays unless competitors work those holidays or unless the holiday falls on a Saturday or a Monday. The clause requested by the union states that beach routes are excluded. This company has resort business and must meet competition from nonunion bakers, and it appears to the company that some sort of a provision should be inserted in the contract protecting the company on resort business.

Discussion

In the Allied Baking Case involving Local No. 404 of the same international union, which was decided by this Board on Apr. 21, 1945, the same clause was ordered. This clause was also ordered by the National Board in Case No. 11-119-C.

As the union has indicated its willingness to have this clause remain inoperative until the other concerns in the area are organized and come under the master agreement, the panel will recommend that this clause be inserted in the contract with the following provisos:

(a) An appropriate clause be inserted to provide for resort business in the same manner as beach business is protected.

(b) The holiday clause remain inoperative until the other concerns come under the master agreement.

4. Vacations

Present Practice

The present practice of the company has been to grant one week's vacation with pay each year.

Union's Position

"Two consecutive weeks' vacation, with full pay and commission shall be given each employee who has been employed one year continuously with the employer. Seniority rights shall prevail when choosing time for vacation. The employer shall not be required to have more than five per cent of its sales drivers absent on vacation at one time, but the union shall be entitled to have at least five per cent absent on vacation at one time unless otherwise mutually agreed upon.

"The vacation period shall be from Feb. 15 to Oct. 31. The seniority list and vacation schedule shall be posted not later than Feb. 1.

"An employee hired prior to Oct. 15, 1939, who resigns or is discharged before receiving a vacation properly due him, shall receive two weeks' pay in lieu of vacation if employed through Feb. 15, 1944. If hired after Oct. 15, 1939, upon discharge or resignation, he shall be paid 2 weeks' pay, exclusive of overtime, if he has not received a vacation for each 12 months of service. In the case of sales employees, the two weeks' pay shall be based on the average of the previous four weeks' earnings."

In support of its request, the union states that it is the practice in the New England area, and it is the practice in the industry in this area. Figures submitted by the Wage Stabilization Division indicate four out of six companies pay two weeks' vacation after one year.

Company's Position

It is the position of the company that the request of the union should be denied for, according to the company's own knowledge of conditions in the industry in the area, the practice of giving two week's vacation after one year is not common, and the information submitted by the Wage Stabilization Division is incorrect.

Discussion

As indicated earlier, the information obtained for the companies listed A through D on Table IIA was obtained by the Wage Stabilization Division after personally visiting the area and obtaining this information from the companies involved.

The company questioned the correctness of the vacation information and later submitted letters from the concerns in the area indicating the information given the staff representative had been in error. Table 2B gives the correct area information. As this material was submitted by the concerns in question, the panel must, of necessity, consider that this is the correct information, and thus it appears that industry practice is one week after one year.

Board policy is as follows: "If a company and a union had one week's vacation after one year's length of service and the company is in an industry or an area in which two weeks'

after five years' service are not prevailing, the Regional War Labor Board may award a second week's vacation based on 40 or 48 hours times the average straight-time hourly earnings."

In accordance with this policy, the panel will recommend two weeks' vacation after five years be granted. The pay should consist of a full pay and commissions. The panel believes though that the method of computation and the eligibility date should be negotiated by the parties.

5. Picket Lines

Union's Position

"No employee shall be required by the employer to receive or deliver goods or to work where there is any labor trouble."

During the discussion on this issue, the panel indicated that the identical issue was before the Regional Board in the Allied Baking Case Supra. This issue was referred by the Regional Board back to the parties for further negotiations, and this panel will recommend the request be denied as the Board does not order such a clause.

6. Maintenance of Membership

Union's Position

The union requests the following clauses:

"The employer will employ, in the classes of work covered by this agreement, members in good standing of the union.

"When a vacancy or opening occurs, the union will be notified. If the union cannot furnish qualified members to fill such vacancy or opening, the employer may employ those who are not members, but such nonmembers must meet the requirements of the employer and the union within 30 days from the date of employment. The employer will, upon written request of an authorized representative of the union, discharge any employee who fails to become, or to remain, a member in good standing of the union.

"When nonmembers are employed, they will be considered on probation for a period of 60 days from date of employment in so far as seniority and discharge are concerned.

"The employer will notify the union in writing within one week after the time any new employee reports for work."

The union realizes though that it is not Board policy to grant this type of clause and requests the standard War Labor Board maintenance-of-membership clause be granted for the following reason: The union is a responsible, well-run organization that lives up to its contractual obligations, and no [charge of] irresponsibilities can be made against this union.

Company's Position

It is the position of the company that the request of the union should be denied for, in August 1944, when the union was attempting to organize these men, the employees went out on strike, causing a loss in product.

The union does not meet the criteria established by the War Labor Board.

Discussion

The work stoppage took place at a time when the men were not represented by any union. As yet, it may be noted, the company still refuses to recognize the union. Originally these men affiliated with the Manchester Local and have now transferred to the Lawrence Local which was not a party to the proceedings which led up to the work stoppage. The Board does not grant maintenance of membership to individual employees. It grants maintenance to the organization representing the employees, and this panel finds the record of the union here involved clearly indicates that it is a responsible, well-run organization, and it will therefore recommend that the standard War Labor Board maintenance-of-membership clause be granted.

As this case was certified on Mar. 20, 1945, the panel will recommend that the terms and conditions recommended become effective Mar. 20, 1945.

Recommendations

Effective Mar. 20, 1945, it is recommended that:

(1) *Recognition.*—Genest Bakeries, Inc. recognize the union as the collective bargaining representative of the employees involved.

(2) *Wages.*—The base rate shall be $17.00 with 7 per cent commission, and the guarantee shall be $32.00 per week.

(3) *Holidays.*—"No employee, except transport and special delivery, shall work on Sundays or on the days celebrated as the following named holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Armistice Day, Thanksgiving, and Christmas.

"No delivery of bakery products shall be made to stores on Sundays or holidays, except on beach routes.

"No sales employee shall be paid less than the weekly guarantee, and there shall be no reduction in base pay because of a holiday."

This clause shall remain inoperative until the other bakeries in the area are organized, and the parties shall jointly negotiate an exclusion for resort business similar to that for beach business.

(4) *Vacations.*—Employees with one year's service shall receive one week's vacation with pay; employees with over one but less than five years' service shall receive one week's vacation with pay; and employees with over five years' service shall receive two weeks' vacation with pay, a week's pay to consist of a full pay and commissions. Eligibility dates shall be negotiated by the parties.

(5) *Picket Line.*—The request of the union be denied.

(6) *Maintenance of Membership.*—The standard Board maintenance-of-membership clause with the 15-day escape period shall be inserted in the collective bargaining agreement between the parties.

Signed by Philip Taft, representing the public; Chesley W. Stone, representing employers; and Abe Pearlstein, representing labor, subject to dissent on Issues 2 and 4 on inadequacy and Issue 5.

PHILADELPHIA TRANSPORTATION CO.—

Decision of Regional Board III (Philadelphia)

In re PHILADELPHIA TRANSPORTATION COMPANY [Philadelphia, Pa.] *and* TRANSPORT WORKERS UNION OF AMERICA, LOCAL 234 (CIO). Case No. 111-14560-D, July 17, 1945.

PREMIUM WAGE RATES—Night-work premium—Holiday pay

Transit company employees are entitled to premium of four cents per hour for all work performed between 6 p.m. and 6 a.m. despite fact that no important industry practice exists supporting award since night-work premiums are so generally paid throughout industry in general. Premiums shall not be put into effect, however, until award has been "pre-reviewed" and approved by National Board.

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked.

For other rulings see Index-Digest 140.565, 140.230, and 140.278 in this or other volumes.

Majority decision of Regional Board III (Philadelphia) amending recommendations of panel. Opinion by Sylvester Garrett, chairman. Public members concurring: Bert W. Levy and William N. Loucks. Labor members dissenting on Pars. I(1), (10), III(1), (a), (b), (c), (d), (e), (g), (h), (i), (j), and I(8b) as to reschedule: Joseph Hueter and John B Backhus. Employer members dissenting on Pars. I(3), (6), (7), (8), (9), and (11): H. K. Breckenridge and Jess. T. Hopkins.

Directive Order

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Maintenance of Membership

(a) All employees who, on August 1, 1945, are members of the Union in good standing, in accordance with its constitution and by-laws, and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by a hearing officer to be appointed by the Regional War Labor Board. The decision of the hearing officer shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, a hearing officer will be selected by the Regional War Labor Board, on due application. The decision of the arbitrator or hearing officer shall be final and binding upon the parties.

"Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the standard form of notice and statement of the procedure to be followed in administering the maintenance-of-membership provision [12 War Lab. Rep. XXVIII; WCDS 321], in the absence of some other procedure agreed to by the parties."

2. Wage Reopening

In the event of any change in national wage stabilization policies, directives, or legislation affecting the wage provision of the contract, either party, upon 30 days' written notice to the other, shall have the right to reopen the wage provisions of the contract for renegotiation of a general increase within the limits allowable under such changes in national wage stabilization program.

3. Shift Premium

In addition to its regular wage rate, the company shall pay a premium of four cents per hour for all work performed between the hours of 6:00 p.m. and 6:00 a.m. If neither party files a petition for review of the Board's action on this issue, the foregoing night-shift premium shall nevertheless not be put into effect until it has been pre-reviewed and approved by the National War Labor Board. If, however, a petition is filed by either party requesting review of this provision, then there shall be no pre-review, but this provision shall be reviewed by the National Board in accordance with its normal procedure and in the light of the Regional Board's action on the entire dispute in this case.

4. Overtime on Holidays

The company shall pay 1½ times its regular wage rates for all work performed on any one of four specified annual holidays. The parties shall select the four holidays by negotiation.

5. Vacations

Those provisions of Art. VII, Sec. Sec. 701, Pars. (1)(a), (b), (c), and (d) and any other provisions of the 1944 agreement between the parties which require employees to accept vacation pay allowances in place of actual time off shall cease to govern the relations between the parties. The paragraphs referred to immediately above, which require the substitution of vacation pay for time off with pay, shall be amended in accordance with the principle that the schedule of vacation time shall be based on the seniority of the employees and the schedule shall be mutually agreed on by the company and the union. The parties shall determine by negotiation the precise language of the amendments.

6. Uniforms and Work Clothing

All uniforms and work clothing which are now, or may in the future be, specifically required by the company for the performance of any job shall be furnished to the employees by the company without charge. The conditions under which clothing shall be supplied by the company in order to provide the necessary incentive for employees to maintain the clothing with proper care shall be negotiated by the parties.

7. Overtime on Days Off

The company shall pay 1½ times its regular wage rates for all worked performed by any employee on any day which is regularly the employee's day off duty. The parties shall determine by negotiation what absences shall be counted as days

worked during the workweek for the purposes of application of this provision.

8. Overtime, Daily and Weekly

Transportation Employees

(a) The company shall pay 1½ times its regular wage rates for all work performed by any transportation employee in excess of 8½ hours in any one day and in excess of 44 hours in any one week, provided, however, that there shall be no pyramiding of daily and weekly overtime payments for the same hours worked. This order on weekly overtime is based on the understanding that the 1944 agreement between the parties does not preclude the company from rescheduling the workweek.

Maintenance Employees

(b) The company shall pay 1½ times its regular wage rates for all work performed by any maintenance employees in excess of 8 hours in any one day and in excess of 40 hours in any one week, provided, however, that there shall be no pyramiding of daily and weekly overtime payments. The company shall have the right to reschedule the working hours for any maintenance employees who are presently scheduled to work more than 8 hours per day or more than 40 hours per week under the 1944 agreement.

9. Progression of Transportation Employees

The company shall increase the wages of transportation employees to the top rate of their respective job classifications at the completion of six months of steady employment.

10. Discontinuance of Christmas Bonus and Clothing Allowance

The company shall have the right to discontinue the Christmas bonus and clothing allowance contained in the prior contract.

11. Retroactivity

The provisions of this order, as set forth in the foregoing paragraphs, shall be put into effect retroactively to Feb. 11, 1945.

The procedure to be followed in making retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. (1) The Board denies the following union requests:

(a) Seventeen cents per hour general wage increase,

(b) Union shop,

(c) Pay for six holidays not worked,

(d) Increased vacation allowances,

(e) Overtime pay for work on Sundays,

(f) Change in present method of payment for lateness in the completion of regular assignments, except as modified by the order on overtime,

(g) Change in report time and check-in time pay,

(h) Change in pay for travel on swing runs,

(i) Change in present method of computing overtime pay on basis of platform time only, and

(j) Change in present method of computing swing-time premium.

IV. The parties are directed to negotiate further on the pension plan.

V. This order shall stand confirmed as the order of the National War Labor Board unless, within 14 days from the date hereof, a petition for review is mailed to or filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree; provided that the 15-day period applicable to Par. I 1 (a) above shall run from the date of this order, and provided that the provisions of I 3 shall not become effective, in the absence of an appeal by either party on this issue, until the Regional Board's action has been pre-reviewed and approved by the National Board. The parties will be promptly notified of the National Board's action if pre-review is required.

Opinion of the Board

WAGE ISSUES

GARRETT, Chairman: — This dispute involves more than 9,000 employees in the company's transportation and maintenance departments, who are represented by the union for purposes of collective bargaining. Originally, 300 disputed issues were certified to the Board, but the bulk of them have been referred back to the parties for further bargaining in the expectation that they will be settled by the parties without further action of the Board.

In dealing with the remaining issues the panel to which they were referred has recommended, among other things: (1) Denial of a general increase in wages, (2) granting maintenance of membership without an escape period, (3) granting a night-work premium for hours between 4 p.m. and 6 a.m., (4) granting pay for holidays not worked and time-and-a-half pay for holidays worked, (5) denial of liberalization of vacation practice, (6) furnishing by the company of uniforms and working clothes where required by the company for the performance of any job, (7) granting overtime pay after 9 hours per day and 49½ hours per week, (8) granting the top job rate to transportation department employees after six months instead of a year of service, (9) denial of various proposals as to time allowances and work time, (10) referral of a pension plan issue to the parties for negotiations, and (11) granting permission to the company to discontinue a Christmas bonus and clothing allowance.

By majority action, the Board has adopted the panel recommendations on all issues in the case except for modification of the recommendations as to night-work premium, holiday pay, and daily and weekly overtime, and with the insertion of a provision for an escape period in the maintenance-of-membership clause.

In view of the importance of the three wage issues covered by the panel recommendations which we have modified, it is appropriate to set forth in some detail the nature of the panel's recommendations thereon and the bases for the position of the public members in dealing with them. The panel was unanimous in recommending payment of a four-cent hourly premium for work between 4 p.m. and 10 p.m. and of a six-cent hourly premium between 10 p.m. and 6 a.m. As to holidays, the labor and public members recommended that any employee not working on each of four holidays in any year should receive straight-time pay and that employees working on any such holiday should be paid time-and-a-half pay. Finally, the industry and public members of the panel recommended time-and-a-half pay for transportation department employees working in excess of 9 hours a day or 49½ hours per week.

The Regional Board, industry members dissenting, has ordered a premium of four cents per hour for hours worked between 6 p.m. and 6 a.m., with the provision that the question should be reviewed by the National Board before the order becomes effective in case neither party appeals on the issue. By a similar vote, we have ordered time-and-a-half pay for hours worked in excess of 8½ in any day by transportation department employees and in excess of 44 hours per week. With labor members dissenting, we have refused to order payment to employees not working on the four annual holidays but have adopted the panel recommendation that employees actually working on such holidays should receive time-and-a-half pay.

Daily and Weekly Overtime

The panel recommendation both as to daily and weekly overtime differs substantially from the overtime provisions ordered by the Regional Board in a number of recent transit cases.

In the Schuylkill Valley Lines, the Conestoga Transportation, the Delaware Coach, the Trenton Transit [20 War Lab. Rep. 333] and the Southern Pennsylvania Bus cases, the Regional Board has ordered payment of time and a half after 44 hours' platform-time work per week. We have approved similar provisions for weekly overtime pay in voluntary cases involving six other companies. In still other voluntary cases, we have approved time-and-a-half pay for hours worked beyond 40 per week.

In the Delaware Coach and Southern Pennsylvania Bus cases, moreover, we ordered payment of time and a half for hours worked after eight in any one day, and similar provisions have been approved in a number of voluntary applications.

In view of these precedents, there is no doubt that the panel could have recommended payment of time and a half for hours worked in excess of 44 per week. That it did not so recommend, we have no doubt was in part the result of its recommendation with respect to the night-work premium pay, which is discussed below. Since we have substantially modified the latter recommendation, we do not hestitate to modify the recommendation on the overtime issue in order to conform to our usual practice.

In so doing, we have taken account of the fact that the company guarantees a minimum of eight hours pay per day to transportation department employees. In view of this provision, it would not seem practical to require

daily overtime pay on the basis of less than 8½ hours' platform time if we are to leave to the company any margin of flexibility in establishing its runs so as to satisfy the eight-hour minimum guarantee.

Night-Work Premium

There is little precedent in the transit industry for the unanimous panel recommendation that a premium be paid for hours worked between 4 p.m. and 6 a.m. In supporting its recommendation, however, the panel relied on the fact that late-work premiums are so generally paid throughout industry that the Board should not limit itself strictly to an industry comparison. In this connection, the panel emphasized that the practice of other industries was indicative of the existence of a widespread belief that night work normally should command some premium over similar work performed during the day.

In view of the various decisions of the National Board on the point in the last year or more, there is no doubt that the National Board favors proper compensation for the extra burden of night work although such compensation may be unusual in the particular industry involved. Carnegie-Illinois Steel Corp et al., 19 War Lab. Rep. 568; Spaulding Bakeries, Inc., 25 War Lab. Rep. 270; Associated Press, 23 War Lab. Rep. 115, affirmed, June 21, 1945, Release B-1870-A, NWLB.

It seems clear also that, where particular employees are regularly employed at night doing work identical with that of other employees regularly employed during day time hours at the same rate of pay, there is no room for any claim that the basic wage rates of the employees include compensation for the late-shift work. Such is the situation in the present case, where employees working between 6 p.m. and 6 a.m. on a regular basis do the same work as employees who work only during the day. Since both groups receive the same rate of pay, it is clear that the wage rates of the night employees do not include any premium pay for the extra burden of night work. In view of this, there is no doubt, under the decisions of the National Board, that the Regional Board is authorized to order the granting of such premium pay.

It is true that no important industry practice exists supporting the ordering of such premium pay. As far as the present company is concerned, however, this fact does not give rise to any compelling reason for not recognizing the equity in favor of premium pay since the Philadelphia Transportation Company does not compete to any appreciable extent with other companies in the transit industry. Moreover, the absence of a substantial supporting industry practice does not, standing alone, justify a refusal to order night-work premium pay under the circumstances here present.

There remain, however, the two questions of the hours to which a premium should be related and the amount of the premium. At present the Reading Street Railway Company has negotiated a differential of two cents per hour for work performed from 6 p.m. to 6 a.m. and for straight runs commencing after 4 p.m. This provision, which has been approved by this Board, is now under consideration by the National Board. The transit employees of Hershey Estates, Hershey, Pa., receive an hourly premium of three cents for hours worked between 6 p.m. and 6 a.m. A recent application proposes increasing this premium to five cents. The Chicago Surface Lines pay a differential of two cents per hour on the so-called "owl runs" in the late evening and early morning hours, and the Detroit Street Railways pay a ten-cent premium for "owl run" hours. Since the differentials existing in the Chicago and Detroit companies apparently cover only a comparatively few hours, it is apparent that the Reading and Hershey cases are the only ones which approximate in hourly coverage the recommendation of the panel in this case. We think, in any event, that practical considerations require that premium pay should not be ordered for any hours earlier than 6 p.m. From 4 p.m. to 6 p.m. the public use of PTC facilities is greater than during any other two-hour period of the day. For this reason, we are not prepared to accept the panel's recommendation for premium pay between the hours of 4 p.m. and 6 p.m.

In dealing with the question of the amount of premium, we have noted that the panel has pointed to no practical or equitable consideration requiring that hours worked between 10 p.m. and 10 a.m. should enjoy a greater differential than those worked between 4 p.m. and 10 p.m. In the light of the entire case, we are convinced that a premium of four cents per hour constitutes an adequate recognition, at least for the present, of

the added burden of night work. In view of this and since the establishment of a differential in the amount of premium would entail undue complications for the company, our order provides for a single premium of four cents for hours between 6 p.m. and 6 a.m.

Holiday Pay

The public members recognize the general desirability of ordering some form of premium pay for holiday work but believe it impractical in this case to order pay for holidays not worked. According to the information furnished us, there are at least 14 transit companies in the United States which pay time and a half for work performed on specified holidays. On the other hand, there appear to be only three companies which grant pay to employees who do not work on such holidays.

This showing of industry practice, we think, suggests a recognition of the practical difficulty of inducing employees to work on holidays at time and a half pay when, if they do not work, they receive their regular pay. Of course, since the company is not covered by Executive Order 9240 [8 War Lab. Rep. XXVII; WCDS 20], we could order doubletime pay for work actually performed on holidays, yet would be reluctant to do so since it would place these employees in a more favorable position than those engaged in war work, subject to Executive Order 9240, and would find no substantial support in either industry or area practice. These factors, in the light of our disposition of other issues in the case, have led us to refuse to order pay for holidays not worked.

Before closing this opinion, it seems appropriate to point out that the position of the public members on each issue resulted from a consideration of such issue against the background of the entire case. In other words, our vote to modify the unanimous panel recommendation for a late work premium, and the extent of the modification voted, are both related to our action on the overtime and holiday issues. Similarly, our action on all of these issues was in recognition of the action taken on other issues, not here discussed. On some of them, it is clear that we might have voted to establish conditions either more or less favorable to the interests of the two parties, without deviating from any clearly established Board policy. In sum, therefore, our action in this case represents what we conceive to be a fair and practical over-all settlement of the issues considered.

Now that the Board has disposed of the important issues in the dispute between the parties, it becomes their responsibility to settle the remaining numerous issues which originally were brought to the Board. These issues were returned to the parties for collective bargaining since it was apparent that they had not exhausted all reasonable efforts to resolve them without resort to the Board. It is clear that such multitudinous issues, involving intimate detail in the operation of the company's business, must be settled by the parties by forthright and intelligent collective bargaining. The Board and the public expect that both parties will not fail to meet their obligations in this respect.

Report and Recommendations of the Panel *

May 23, 1945

THE OPERATION

The operation covers the public transportation industry of the City of Philadelphia, including street railway, subway-elevated railway, trackless trolleys, and motor bus lines. It also extends into adjacent suburban territory. This enterprise is carried on from some 65 installations such as car houses, shops, substations, etc., located all over the city and includes as line operations some 105 different routes which range in required time for the round trip from 7 to 142 minutes.

There are employed in carrying out this operation a total of 10,921 persons who are distributed as follows: Transportation unit, 6,022; maintenance unit, 3,154; and office workers, 1,745.

PARTIES TO THE DISPUTE

This dispute covers only the transportation and maintenance units, the office workers forming another bargaining unit. The employees of this company have been organized since 1937 when an independent union became the bargaining agent after an election conducted by the mayor of Philadelphia. On Mar. 14, 1944, the Pennsylvania Labor Relations Board conducted a representation election

* Ed. Note: Only those portions of the panel report relating to shift differential and definition of shift time, pay for holidays not worked and premium for holidays worked, and daily and weekly overtime are reproduced.

and certified the Transport Workers Union, Local 234 (CIO), as the bargaining agent for the employees herein involved. On Apr. 28, 1944, the first agreement was entered into which covered only one point, that of vacations. The first contract agreement under this bargaining relation is dated Aug. 9, 1944, and it has been supplemented on Nov. 28, 1944, and Feb. 7, 1945. Under these various agreements with the present union and subsequent to the date of their certification as bargaining agent, a total increase in monetary benefits to the employees in the amount of $2,282,000.00 annually has been bargained and agreed. This amounts to a net gain of 10.7 per cent under the activity of this bargaining agent.

Acting under Art. XI, Sec. 1101, the union gave notice 60 days before Feb. 11, 1945, of its desire to terminate the agreement of Aug. 9, 1944, and of its desire to negotiate a new contract. At various times between Jan. 31, 1945, and Mar. 8, 1945, demands were filed with the management by the union. In view of the fact that the old agreement specified termination specifically, various extensions were agreed upon by the parties, and finally, in case 111-14037-D [22 War Lab. Rep. 226], this Regional Board was forced to direct the extension of the provisions of the old contract with certain limitations until agreement shall be consummated.

Involved in these demands which were presented over a considerable spread of time continuing to a period after the legal termination date were some 300 odd specific issues. Agreement was reached on none of them, but after certification to this Board, the New Case Committee remanded all except those listed below for further negotiation. At the hearing it was not apparent that the parties had negotiated on any of the issues. There was indication on the contrary that there had been some discussion of some lump sum financial advance for the men which would be distributed over various fringe proposals in such a way as to provide some equitable general increase. The negotiations apparently broke down because there was no agreement upon this lump sum amount, but not because the issues themselves had been adequately discussed.

ISSUES

Ten issues were accepted by this Board and submitted to the panel. During the course of the hearings two additional issues were added. Hearings on these issues were held on Apr. 23 and Apr. 24, The Honorable Harry Sacher, representing the Transport Workers Union and the Honorable Allen Hunter White appearing for the Philadelphia Transportation Co. The issues discussed in these hearings are as follows:

1. General wage increase;
2. Union shop;
3. Shift differential and definition of shift time;
4. Pay for holidays not worked and premium for holidays worked;
5. Vacations;
6. Uniforms and work clothing;
7. Overtime:
   (a) Daily and weekly,
   (b) Days off,
   (c) Sundays as such, and
   (d) Lateness of completion of a run;
8. Progression in transportation unit;
9. Time allowance and work time:
   (a) Report time,
   (b) Check-in time,
   (c) Travel on swing runs,
   (d) Change from platform to duty time, and
   (e) Swing-time premium;
10. Retroactivity;
11. Pension plan; and
12. Christmas bonus and clothing allowance.

Basis of Argument

In order to make a presentation of the equities in regard to each individual issue, there was one constant point of reference which should be understood in regard to each issue specifically. On the one hand, the union maintains that the transit industry generally, but more specifically this company, has lagged far behind in the economic advantages which most of American industry has gained. Therefore, this industry, and particularly this company, has a long way to go to catch up. It should, therefore, be permitted to travel faster than would ordinarily be supposed proper, but, in addition, comparison should be made not only with the transit industry itself but with the advances that have been made in industry generally. It is further contended that, where specific comparisons are to be made (as for instance in regard to overtime provisions) data should be used from really comparable cities, that is, those of 1,000,000 population and over. Some light can be thrown in this region, but there are not enough cities of over

1,000,000 population to furnish a definite pattern; therefore comparison should be allowed from further afield.

Over against this general underlying argument, the management maintains that the transit industry is definitely different from other industrial enterprises. It has been so recognized by the United States Government, being specifically exempt from the provisions of the Wage and Hour Law and from Executive Order 9240. There is, for instance, in this industry no such thing as a shift; men start and go off work at all hours of the day and night. The length of assignments is based on the length of time required for a trip or multiples of a trip and by the demand of the traveling public. Therefore it is contended that comparisons are not relevant which go beyond this particular industry and that, in order to determine the pattern within the industry, all of the data should be included.

It has appeared to the panel that there is cogency in each of these contentions, and, opposite as they are, they have been kept in mind in seeking to formulate a recommendation to the Board on the specific issues.

The arguments in this case have been very extended but have been covered in written material. This material is included in some 900 printed and typewritten pages. It is, therefore, too extended to be repeated here, but a specific reference of the Board's attention to it is made. In the analysis only the leading arguments will be named.

[Ed. Note: Issues 1 and 2, discussed in the panel report at this point, are omitted.]

3. Shift Differential and Definition of Shift Time

The original demand was for a 10-cent night-shift differential between the hours of 3:00 p.m. and 8:00 a.m. This was variously modified to a final request covering the hours between 4:00 p.m. and 6:00 a.m. The request is urged on the basis of general equity and recent trends in the War Labor Board interpretations of this equity. Particular reliance is placed upon the Steel cases [17 War Lab. Rep. 568] where it is presumed that industry practice is no longer controlling. Although there are some advantages in night work in the transportation industry, these do not make it desirable but only less bad.

The management makes a distinction between continuous and noncontinuous operations. It also points out that, under the demands originally made, every employee would be regarded as doing some night work. It is also pointed out that many older employees deem night work desirable and have chosen it on the basis of their seniority rights. A provision of a shift differential is impossible here because there is no such thing as a shift. Neither could such a penalty encourage the scheduling of work so that night work will not be required because night work is an inherent part of this operation. Neither could it be considered as a temporary condition induced by wartime because there will be no way for this industry to go on a daytime basis after the war as would be the case with most others. It is further pointed out that, under the revised demands, 79.8 per cent of all employees covered by this contract would be affected and that 39.1 per cent of all pay hours would carry the differential. On the basis of a 10 per cent differential the annual cost is estimated at $810,000.00.

Discussion

The panel is unanimously of the opinion that the payment of bonuses for late work is so general as to provide a general standard for American industry. It is aware of the fact that the Board will not be limited to industry and area practice because, in the latest interpretations of the four-and-six-cent limits on the second and third shift, the phrase is used "industry or area practice." It may be presumed, therefore, that the Board will not limit itself to industry comparisons. No case could be made on such comparison. On the basis of area practice, however, there is apparently overwhelming indication both in practice and in trend establishing a judgment of equity. The panel is of the opinion that there is some weight in the management's argument that the time from 4:00 p.m. to 6:00 a.m. is a long period to include as being considered night work; rather this period would be more analogous to a blanketing of what would normally be considered afternoon and night shifts.

Recommendation

It is, therefore, recommended that payment be directed of a four-cent differential for hours worked between 4:00 and 10:00 p.m. and six cents for hours worked between 10:00 p.m. and 6:00 a.m. It is not contemplated that an employee whose time runs into one of the premium periods shall be con-

sidered as working on a premium basis for his entire day's work but only for that part of his time which falls within the premium interval. The detailed arrangements should be remanded to the parties for settlement through negotiation.

[ED. NOTE: Issues 4 through 6, discussed in the panel report at this point, are omitted.]

7. Overtime

(a) Daily and Weekly

The demand is for time and one-half after 8 hours a day or after scheduled time, whichever is less, and after 44 hours a week for employees in the transportation unit, and after 40 hours a week for employees in the maintenance unit. This is urged on the basis of the practice in the industry generally and more particularly in this region, as well as the trend which is currently observable. It is recognized that the present contract guarantees eight hours daily where the run picked by an employee is actually scheduled for less than 8 hours, but it is not recognized that there is any effective guarantee of weekly hours. It is freely admitted that there is no possibility of rescheduling the runs with the present guarantees in such a way as to avoid a penalty in case this overtime provision is granted on a daily basis. Although this is true, it is contended that there is no essential difference here from any other industry where overtime provisions always mean extra expense. It is further asserted that 74.4 per cent of the transit employees in cities of over 1,000,000 population get overtime after 8 hours in spite of contract provisions limiting the cutting of runs.

The management maintains that the proposed provision on the daily basis would require either an overtime penalty or a guaranteed premium for every single run. On account of the eight-hour guarantee of daily work, the company is now paying over 2,000 hours per week in excess of actual scheduled time. Thirty per cent of the runs are affected by this eight-hour guarantee. It is further stated that there is no comprehensive precedent in the transit industry for daily overtime. In substantiation of this point, a schedule is presented in Exhibit No. 29 (q.v.) showing the overtime practices for operating personnel in all dominant transit companies with union contracts operating in metropolitan districts over 300,000 population. Reliance is placed upon the fact that the transit industry is, by its very nature, unique and has been so recognized in the provision of the Wage and Hour Law as well as in exemption from Executive Order 9240.

More particular emphasis is laid upon the fact that in this industry it is impossible to schedule runs to exactly any specified number of hours. Under present provisions, platform time averages five per cent less than pay hours. In regard to weekly overtime, it is stated that there is an effective guarantee of a six-day workweek for all except a very few (approximately three per cent) of the operators. This, together with the daily eight-hour guarantee, provides an effective weekly guarantee of 48 hours (or 46 hours in case there is a day during the weekly run which carries only a six-hour guarantee, e.g., Sunday). In this connection, reference is made to the contract provision (Art. VII, Sec. 18 (g)) where the following sentence is found: "Each regular train man shall pick runs requiring six days of work per week * * *." Further reference is made to the manpower rules with which this company must conform. The management sets forth in detail in its statement to the panel on page 61 ff (q.v.) the answers to the question proposed in the National War Labor Board's "Resolution on Overtime in Local Transit Industries."

The panel is unanimously of the opinion that daily overtime is a definitely established pattern in American industry generally and knows of no reason why the transit industry, in spite of its unique nature, should be exempted from this general consideration of equity. The panel is divided, however, in regard to the number of hours after which daily overtime shall be paid to transportation employees. The labor member of the panel recommends that daily overtime be paid after eight hours regardless of the eight-hour daily guarantee. A majority of the panel (the public and industry members) recognize that the eight-hour daily guarantee is an effective guarantee of more than eight hours for the majority of runs. Therefore, to order overtime after eight hours would, according to the provisions of the contract, make mandatory, and remove from the management, the right to reschedule the work in such a way as to avoid the penalty. The possibility of scheduling work within

a certain number of hours depends upon the length of time required for the last trip in the schedule. The trips vary from 7 minutes to 142 minutes, the median falling near 60 minutes.

It is, therefore, recommended by the majority that overtime be ordered for transportation employees after nine hours in any one day, thus providing what is deemed to be an equitable opportunity for the management to reschedule work so as to avoid overtime premiums without infringing other provisions of the contract. The labor member of the panel further disagrees with the majority and recommends that weekly overtime be paid after 44 hours, which is the request of the union, and amounts to 5½ times the daily time. The majority of the panel (the industry and public members) recommend that weekly overtime be paid to transportation employees after 5½ times the daily time, that is, after 49½ hours. (This will be on the basis of platform time. See recommendation on Issue 9 (d)*.) In making this recommendation, these members of the panel do not agree that there is an effective weekly guarantee as argued by the management. The clause of the contract cited does not require the management to schedule runs on a six-day basis but only says that men shall pick on that basis. There is apparently in the contract no reason why the management may not reschedule weekly work in a way that would bring the hours within the 49½ here specified. The panel unanimously recommends daily overtime after 8 hours and weekly overtime after 40 hours for maintenance employees.

[Ed. Note: Issues 7b through 12, discussed in the panel report at this point, are omitted.]

Signed by C. F. Penniman, representing the public; Fred Krafft, representing employers; and George Pennington, representing labor.

* Ed. Note: The majority of the panel, labor representative dissenting, recommended denial of the union request that all travel, reporting, and finishing time be included under pay hours.

PACIFIC FRUIT AND PRODUCE CO.—

Decision of Regional Board XII (Seattle)

In re Pacific Fruit and Produce Company [Tacoma, Wash.] *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 313 (AFL). Case No. 111-15503-D, July 19, 1945.

WAGE ADJUSTMENTS — Effective date of adjustments—Penalty on union for delaying negotiations

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiation for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board.

For other rulings see Index-Digest 225.396 and 225.343 in this or other volumes.

Majority decision of Regional Board XII (Seattle) on this issue. Opinion by Harold A. Seering, public member. Public members concurring: George B. Noble and Raymond B. Walker. Employer members concurring: J. R. Babcock and M. J. Muckey. Employer member dissenting: Gerry Weaver. Labor members dissenting: Neil V. Pardo, Charles W. Vahlbusch, and John M. Fox.

Directive Order

The Twelfth Regional War Labor Board, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. Vacations

The new collective bargaining agreement shall provide all employees a paid

vacation of one week after one year's service and two weeks after five years' service for this employer.

II. Wages

The new collective bargaining agreement shall contain the following wage scale:

Classification	Hourly Rate
Driver, Less Than One Ton....	$1.00
Driver, One Ton to Five Tons..	1.055
Driver, Over Five Tons, Semi-Trailers and 6-Wheelers.....	1.10
Helper, Steady	1.00
Helper, Extra; Driver, Extra...	1.10

Any person receiving more than the rate provided herein for his job classification shall not be increased or decreased by reason of this directive order.

III. Effective Date

The adjustments herein provided shall be effective as of Feb. 14, 1945.

Any employee coming within the terms of the foregoing who has either quit or been discharged since Feb. 14, 1945, shall receive the amount of the increase for his classification up to the date upon which his employment with the company terminated.

The company and the union shall promptly send a joint letter to each such employee at his last known address, advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment if good cause is shown for the application being delayed beyond the 60 days. Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States.

The foregoing paragraph, relating to retroactive pay, shall not apply to any employee not on the company's payroll for a total of 15 days during the period of retroactivity provided for herein.

The effective date herein ordered is intended solely to require any wage or salary adjustments, payment of which has been withheld pending such order, to be paid retroactively to such date. The effective date given this order is not intended, and shall not operate, as an approval of any wage or salary adjustment effected prior to receipt of any approval required by the Stabilization Act of Oct. 2, 1942 [16 War Lab. Rep. 5; WCDS 9], and the orders and regulations issued pursuant thereto, and thus made in contravention of such act, orders, and regulations.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. Subject to the same conditions, this order shall be suspended in the event a petition for reconsideration is filed with the Regional Board, until disposition of the petition for reconsideration.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Opinion of the Board

July 18, 1945

EFFECTIVE DATE

SEERING, Public Member:—The Board designated Feb. 14, 1945, as the effective date for the adjustments in both of these cases, that being the date negotiations commenced. In accordance with the directions contained in the policy statement of Aug. 16, 1943 [10 War Lab. Rep. VII; WCDS 30] (2403.3 Manual of Operations), this opinion is written to set forth the reasons for that action.

In so far as they are pertinent to the question of the effective date, the facts will be briefly set forth. In case No. 111-15503-D, it appears that the company recognized the union in 1935. From 1937 to 1942 the company was a member of the Pierce County Distrib-

utors' Association, and negotiations were carried on through the Tacoma and Pierce County Allied Truckers' Association In 1942 the company resigned its membership in that Association and has since carried on its own negotiations with the union. In February 1943, the union notified the company of its desire to reopen the contract for the purpose of adjusting wages and expense money for drivers. Beyond an acknowledgment by the company of the union's letter demanding reopening of the contract, no negotiations took place until Feb. 14, 1945.

In case No. 111-15507-D, it appears that, on Jan. 1, 1942, the parties entered a continuing contract reopenable on 30 days' notice prior to the anniversary date. On May 1, 1944, the union gave the company notice of its intention to reopen the contract. Again this notice was acknowledged by the company, and no negotiations took place until Feb. 14, 1945.

It is true that, under the policy statement of the National War Labor Board, where there has been a previous contract, the Board will ordinarily make adjustments retroactive to the expiration date of the last contract or the date on which the wage issues were reopened. To follow that rule in these cases, however, would, it is felt, be inequitable. Without in any sense fixing blame in these cases, it should be noted that in one there was a lapse of two years and in the other a lapse of nine months between the notice of intention to reopen the contract and the opening of negotiations. The policies on retroactivity evolved by the National War Labor Board are based upon the general proposition that, but for the delays incident to the following of the orderly procedures of the Board, an agreement would presumably have been reached at an earlier date than that of the Board's decision. This involves consideration of diligence on the part of the union in pressing its wage demands and the further question of obstructive or delaying tactics on the part of the employer. As to the latter, the record contains no evidence that the lapse of time here was in any degree attributable to the employer. The mere giving of notice of reopening the contract does not discharge in full the obligation of the union. The employer, under the law, has no affirmative obligation to do more than negotiate in good faith. The burden of asserting and pressing the demands still rests upon the union. Whatever the reasons for the delay in these cases, it does not appear that the union's demands were pressed diligently. For this reason the majority of the Board felt that to give retroactivity to the date of expiration of the old contract would be inequitable. There having been a previous contract, however, it is felt that the date of opening of negotiations rather than the date of certification of the dispute is the proper retroactive date.

Report and Recommendations of the Panel

June 25, 1945

BACKGROUND

Recognition of the above union by this company began in 1935. From 1937 to 1942 the company was a member of the Pierce County Distributors' Association, and negotiations were carried on through the Tacoma and Pierce County Allied Truckers' Association, and the contract negotiated by that association was the contract between these parties. In 1942 this company resigned its membership in that association and has carried on its negotiations since that time privately.

In February 1943 the union notified the company of its desire to reopen the contract for the purpose of adjusting wages and expense money for drivers. The years Apr. 1, 1943, to Apr. 1, 1945, passed without any negotiations other than the company acknowledging the letter from the union. Prior to April 1944, no new notice of opening was given by the union, and no negotiations were carried on until February 1945. Several meetings were had in 1945, nothing was accomplished, and the assistance of the Conciliation Service was used. Being unable to resolve the issues in the dispute with Commissioner Conn of that Service, the same was certified to the War Labor Board, and the matter was heard before the Trucking Panel of this Region on the 15th day of June, 1945, in the city of Seattle, Washington.

ISSUES

The issues are:

1. Vacations,
2. Wages, and
3. Effective date.

1. Vacation

Present Situation

One week's vacation after one year's service.

Company's Position

The company contends that it constitutes the leading operator in the produce business in this area and that, though it negotiated the two weeks' vacation provision which has existed for several years in the Seattle contract, it did so as a trade, in that the union gave up seven holidays when it requested the two weeks' vacation. It has no such provision in any other contract in any of its operations in 15 states. It contends that it is not the practice in the industry, not the practice in its operations, and that the take-home pay of its employees is already greater than that of its competitors for the reason that they work 40 hours while this company works a six-day week with overtime on the sixth day. For these reasons it resists the awarding of this request.

Union's Position

The union takes the position that these drivers are in the same local as other drivers in the area. That the Pacific Fruit and Produce Company has in the past had the same contract as the Tacoma and Pierce County Allied Truckers Association and that, in November 1944, the National Trucking Commission awarded to the drivers of the members of that association a vacation of two weeks after five years, which is the request presented herein.

Discussion

It has become the policy of this Regional Board and the National War Labor Board to allow this request quite generally. Further than that, the other drivers who were employed by the members of the Allied Truckers Association in Tacoma have received this award. A number of those operators are competitors of the Pacific Fruit and Produce Company, and a considerable number of them are on a 40-hour week with time and one-half after 40 hours, the same as the Pacific Fruit and Produce. The panel recommends the awarding of this request.

Recommendation

That all employees who shall have served this employer for a period of five years shall receive two weeks' vacation with pay.

2. Wages

Present Situation

Classification	Present Rate	Proposed Rate
Driver, Less Than One Ton	$ .95	$1.00
Driver, One Ton to Five Tons	1.00	1.05
Driver, Over Five Tons, Semi-Trailers and 6-Wheelers	1.05	1.10
Helper, Steady	.95	1.00
Helper, Extra; Driver, Extra	1.05	1.10

Company's Position

The company, in negotiations, did not resist the payment of this wage request in line with the National Trucking Commission's decision in the Allied Truckers case and would have placed it in effect as indicated in its proposed contract, a copy of which is a part of the record in this case. Its objection and this dispute case resulted from the demand of the union for the vacation provision in addition to the wage increase. To the granting of this request now, the company raises the question of the failure of the union to notify the company of its desire to open the contract in the year Apr. 1, 1944, to Apr. 1, 1945.

It also raises the question, which it has often times raised before, that its wage rate should not be the same as other companies which are on a 48-hour straight-time week as the take-home pay of its drivers is greater by reason of its overtime from the sixth-day provision than the bulk of the other drivers on a 48-hour week and coming under the jurisdiction of the National Trucking Commission. It doubly stresses this point if a vacation is to also be allowed these drivers.

Union's Position

The union takes the position that this company has, for a good many years, had the same wage rate as those drivers working for members of the Allied Truckers Association and should continue to pay the same wages. The union cannot see any difference in the company's status now than when it formerly negotiated with the association. It should have no privileges greater than the members of that association, nor should the drivers for this company receive less benefits than the drivers of members of the association.

Discussion

It is true that this company was a member of the Allied Truckers Association in past years, and for that reason naturally it had the same rates, and its wage adjustments were effective as of the same date as other members of the Allied Truckers Association.

Another way of looking at it is that it has, while a member of that association, gone along with the rates applied to local pick-up and delivery drivers which set the pace for rates in the same area. It appears logical to this panel that those rates should be applied to this company and will be recommended herein. These are the Allied Truckers Association rates.

Recommendation

Classification	Hourly Rate
Driver, Less than One Ton	$1.00
Driver, One Ton to Five Tons	1.05
Driver, Over Five Tons, Semi-Trailers and 6-Wheelers	1.01
Helper, Steady	1.00
Helper, Extra; Driver, Extra	1.10

3. Retroactive Date

Present Situation

The panel takes the position that the parties are operating under the provisions of the Allied Truckers contract, under which the contract year is April to April.

Union's Position

The union still maintains that on this issue the effective date of the wage adjustments as well as the wage rates and conditions should be the same for this company as for the members of the Allied Truckers Association. The decision in the Allied Truckers Association case rendered by the National Trucking Commission set the effective date of the wage adjustment and of the vacation award as of June 1944, and that date is requested by the union in this case to be the effective date.

Company's Position

Again the company would have accepted this request as presented by the union except that it was unwilling to grant the vacation request. To this request it objects to the notice given by the union in 1943 and no notice having been given in 1944 for the purpose of opening the contract.

Discussion

The union indicated in their brief that it is their position that the Pacific Fruit and Produce Company has no contract with them and further that they had been notified prior to February 1943 that this company had withdrawn from the association. It appears to the panel that, in withdrawing from the association, the company would not, therefore, lose its contract with the union, nor would it be a sound position for the union to argue that that had happened. It would appear to us that, until another contract is negotiated, the association contract is in effect between this union and this employer. It would seem that from February 1943 to February 1945 was somewhat too long a time for the union not to press its demands more forcefully than the facts indicated in this case. The assistance of the Conciliation Service could have been obtained a year ago. If it had no contract with this company, War Labor Board procedure would only grant retroactivity as of the date of certification, which in this case was May 3, 1945. This panel does not agree that there is no contract. It does feel that the union was not sufficiently persistent in pursing its demands for us to recommend a retroactive date to the expiration date of the contract either in 1943 or 1944. The matter can best be settled by adopting a compromise date, recognizing the claim of neither party but equitably disposing of the claims of both by setting the effective date as of Jan. 1, 1945.

Recommendation

That the effective date for the adjustments herein shall be as of Jan. 1, 1945.

Signed by John B. McCourt, representing the public; R. J. Acheson, representing employers; and Perry Gardiner, representing labor.

Cumulative
Index-Digest
Covering Volume 26 to Date

Rulings by the National War Labor Board, its regional boards and commissions, and the courts made in the decisions appearing in this volume, represented by headnote paragraphs, appear in the following pages arranged and classified by subject matter.

Headings of the principal divisions are arranged alphabetically as are also the headings of the subdivisions, with a few exceptions to bring related subjects together. The purpose of the classification is to afford rapid reference to rulings regarding any particular subject matter.

Numerical designations are given to each main heading and all subheadings to facilitate ready reference to the place in the Index-Digest at which material under such headings and subheadings appears. The same and additional headings with their numerical designations appear in other volumes of War Labor Reports, *thus assuring ease in locating rulings on a particular topic in all volumes.*

Main topics appear in capital letters and are designated by numbers followed by a decimal point but without digits beyond the decimal points. All subtopics and their subdivisions are designated by numbers having three digits after the decimal point. Subtopics immediately follow their designating numbers. Subdivisions thereof at the first level are separated from their numbers by one dash; those at the second level, that is, subdivisions of a subdivision, are separated from their numbers by two dashes. In some instances finer or less fine topical breakdown is used in one volume as compared to others.

For assistance in using the Index-Digest of the volumes as a unit, the reader is referred to the "Key" to Volumes 1-20, issued as a special supplement to 25 War Lab. Rep., No. 1 (June 27, 1945). Under each subject heading appear names of relevant cases with volume and page references to headnotes and text.

Rulings made by regional boards, commissions, and courts are so indicated in the Index-Digest. All other rulings are those of the National Board.

The main topics of the classification scheme appear below. Those topic headings which appear with a prefixed star (★) will be found in the Cumulative Index-Digest in this issue; those without the prefixed star appear in other volumes and may appear in later cumulations in this volume.

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Index-Digest

10. ARBITRATION

10.100 Subject Matter of Arbitration

10.101 —In general

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent lay-offs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

10.103 —Arbitrability of issue

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.137 —Interpretation of contract

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.150 —Merit increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.196 —Work rules

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

15. BONUS PAYMENTS

15.050 Attendance Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

15.416 Discontinuance of Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among

other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

32. COLLECTIVE BARGAINING

32.820 Unit for Bargaining

32.857 —Unit determined by NLRB

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

37. CONTRACTS

37.350 Duration of Contract

37.365 —Extension of contract

Board vacates Regional Board's order directing inclusion in contract of clause providing that, if notice of termination or desire to revise agreement is given during war emergency, contract should be extended beyond termination date until new agreement is reached or matter is resolved by War Labor Board.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

41. DEFINITIONS

41.650 Status Quo

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46. DISCHARGE AND REINSTATEMENT

46.200 Reason for Discharge

46.206 —Contract violation

Contract should include clause agreed to by parties under which employer will discharge any member of union who does not comply with union laws or contract working conditions within 24 hours after receiving notice from union. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

46.213 —Fighting

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

46.350 Reinstatement by Board Order

46.410 —Reinstatement pending settlement of dispute

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to

grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46.425 —Reinstatement with back pay

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

49. EMPLOYEES' BENEFITS

49.300 Insurance Benefits

Region I (Boston)

Union's request for employer-financed insurance plan of type which is uniform in area is refused where company contended, among other things, that it already has contributory group life insurance plan in effect in all its plants and that to order another form of insurance for one plant only would have far-reaching repercussions on company's structure. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

Region X (San Francisco)

Union's request that three wholesale jewelers contribute to group insurance plan administered by union is denied despite panel's findings that (1) 96½ per cent of firms and 99 per cent of similar employees in jewelry industry in area are covered by union's plan, (2) National Board has policy of awarding insurance plans under extraordinary circumstances, and (3) overwhelming area practice present in instant case constitutes such extraordinary circumstance. (Region X—San Francisco)—San Francisco Wholesale Jewelers, 26 War Lab. Rep. 78.

49.800 Sick Benefits

Regional Board's order directing company to grant 6 days' sick leave per year with full pay is vacated, despite fact that such plan is prevailing practice in industry in area, since Board will not order sick leave plans in dispute cases in absence of one of two following "unusual" circumstances: (1) In cases where unusual health hazards might justify paid sick leave, and (2) in cases where comparison of total benefits under other plans in operation at same company indicate inequity to employees involved in particular dispute.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Company which has liberal group health insurance plan for employees with one or more years of service should grant 3 days' sick leave to employees with 6 to 12 months' service in accordance with its counterproposal to union's demand for 6 days' sick leave for all employees.—Melville Shoe Corp., 26 War Lab. Rep. 30.

65. HOURS OF WORK

65.180 Call-In Time

Employee requested to work but sent home because of lack of work should receive minimum pay of three hours at his regular hourly rate, even though employee is prevented from working by existence of work stoppage in which he is not participating.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

65.500 Reduction of Working Hours

65.508 —Curtailment of operations

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

65.730 Travel Time

Employees of ordnance plant are not entitled to portal to portal pay, despite contention of union that employees must travel as much as 15 minutes from plant gate to place where they are required to report. Board is desirous that miscellaneous adjustments normally designed to meet special situation or problem should be worked out by parties themselves and Board has not, therefore, solved these issues except in unusual circumstances.—E. I. duPont de Nemours & Co., 26 War Lab. Rep. 67.

65.800 Waiting Time

See Wages—Incentive Wage Systems, 260.124

75. JOB CLASSIFICATIONS

75.050 Adjustment of Classifications

Region III (Philadelphia)

Increased rate ranges previously ap-

proved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III—Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

77. JOB PROTECTION

77.050 Apprenticeship Rules

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

77.220 Guaranteed Earnings

Contract should provide guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees where such provision is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's petition for review of Regional Board's order directing such clause is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent lay-offs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

77.260 Hour Reduction Before Layoffs

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

78. JOB VACANCIES

78.300 Filling Vacant Jobs

Board vacates Regional Board's Order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker, despite fact that such clause is in effect in 95 per cent of contracts which union has with other employers in industry in area. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

82. JURISDICTION OF BOARD

82.300 Concurrent Jurisdiction with NLRB

82.307 —Bargaining unit

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

110. MAINTENANCE OF MEMBERSHIP

110.100 Reason for Awarding Maintenance of Membership

110.165 —Responsible union

Union of newspaper employees is entitled to maintenance of membership, despite finding of Newspaper Commission that union was irresponsible on grounds that it (1) demanded changes in contract prior to expiration, (2) repudiated agreement made by union representatives prosecuting case before Commission, and (3) failed to assume responsibility for strict maintenance of contract. Commission's order denying maintenance of membership is therefore reversed where Commission found that union had kept its no-strike

pledge and had democratic constitution. Commission is requested, in view of Board's action on maintenance of membership issue, to issue order on union's request for check-off.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.220 Reason for Denying Maintenance of Membership

110.260 —Irresponsible union

Board reverses order of Newspaper Commission which denied maintenance of membership on finding that union was irresponsible where Commission also found that union had kept its no-strike pledge and had democratic constitution.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

114. MANAGERIAL FUNCTIONS

114.875 Work Force Size

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep 30.

140. PREMIUM WAGE RATES

140.200 Holiday Premium

140.230 —Award of holiday premium

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.278 —Pay on holidays not worked

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.550 Shift Premium

140.565 —Nightwork premium

Newspaper Commission's denial of night-shift premiums for editorial employees is affirmed. If issue should arise in connection with new contract, however, Commission is requested to examine issue in light of Board's decisions since date of Commission's order and in light of any changed circumstances since issue was last considered.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Region III (Philadelphia)

Transit company employees are entitled to premium of four cents per hour for all work performed between 6 p.m. and 6 a.m. despite fact that no important industry practice exists supporting award, since nightwork premiums are so generally paid throughout industry in general. Premiums shall not be put into effect, however, until award has been "pre-reviewed" and approved by National Board. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.589 —Second-shift and third-shift premiums

Union's request that lace manufacturers establish second-shift premium is denied since lace manufacturing is part of textile industry and second-shift premiums are not generally paid in textile industry, having been denied by National Board in recent textile cases.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Region V (Cleveland)

Employees of company manufacturing industrial electric motor controls are entitled to have present night-shift premiums of five cents for second shift and ten cents for third increased to ten cents for both second and third shifts on basis of Regional Board's resolution that night-shift differential of ten cents an hour shall be granted for plants in electrical industry. Company's contention that area practice must govern is rejected. (Region V—Cleveland)—Electric Controller & Mfg. Co., 26 War Lab. Rep. 109.

155. SENIORITY

155.290 Exception to Seniority Provisions

Region V (Cleveland)

Board reverses prior order and grants union's request for discontinuance of clause of prior contract which provided that employees hired subsequent to Sept. 6, 1943, should be subject to replacement upon conclusion of war. Union contended,

among other things, that retention of clause would permit favoritism in layoffs and that existing 30-day probationary period gives company adequate opportunity to weed out undesirables. (Region V—Cleveland)—Reynolds Metal Co., Inc., 26 War Lab. Rep. 95 *(reversing* 24 War Lab. Rep. 360).

155.580 Supervisory Employees

Employees promoted to supervisory positions not covered by contract are entitled to retain their seniority rights for duration of war.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

165. STRIKES

165.100 Board Procedure in Strike Cases

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute.—General Motors Corp., 26 War Lab. Rep. 53.

165.400 No-Strike Agreement in Contract

165.445 —Violation of no-strike, no-lockout clause

Contract should provide that there shall be no strikes or lockouts for period of contract. Regional Board's order providing for no strikes, lockouts, interference with production, and picketing and directing that any employee, supervisory or otherwise, who violates or advocates violation of contract should be disciplined on first offense and discharged on second offense is vacated.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

205. VACATIONS

205.300 Vacation Plan

205.320 —Liberalized plan

205.323 — —Award of liberalized plan

Lace employees, all of whom now receive one week's vacation with pay equal to two per cent of annual earnings, are entitled to liberalization of vacation plan to provide second week's vacation after five years' service since (1) National Board granted second week's vacation in cotton garment case and (2) branches of textile industry in which only one week is granted are also branches in which employers provide group insurance at cost of about two per cent of payroll. Because of manpower shortage and to prevent depriving other employees of work during extended vacation shutdown, however, employers are granted option of giving pay in lieu of second week's vacation.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

225. WAGE ADJUSTMENTS
(not elsewhere classified)

225.300 Effective Date of Wage Adjustments

225.330 —Retroactive effective date

225.331 — —In general

Awarded wage adjustments should be retroactive to date on which parties met with Conciliation Commission after written presentation of request for awarded adjustment. Parties' prior agreements have been informal and unwritten and Board's customary criteria for determining retroactive dates, therefore, are not applicable.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

225.338 — —Certification of dispute to Board

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

225.343 — —Contract negotiations, commencement

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiation for new

contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.396 — —Wages first became issue in negotiations

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiations for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle) —Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.640 Merit Wage Increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

225.900 Voluntary Wage Adjustment

225.945 —Wage approval cases

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III —Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

245. WAGES—COST-OF-LIVING ADJUSTMENTS

245.300 15 Per Cent Rule

245.310 —Application of 15 per cent rule

245.3101 —In general

Newspaper Commission's order denying union request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Newspaper Commission's award of general increase of $2.50 weekly to employees earning less than $50 is remanded for reconsideration in light of current policies. Award was made on basis of finding that, under interpretation by War Labor Board of arbitration award involving same parties and involving question of calculation of Little Steel increase, employees were entitled to further average increase of 77 cents an hour. Instead of granting 77 cents to all employees, however, Commission made equivalent award of $2.50 to employees earning less than $50 on ground that it is WLB policy to favor low-paid employees in making cost-of-living adjustments.—New York Herald-Tribune, 26 War Lab. Rep. 18.

250. WAGES—GOING WAGE RATES

250.050 Application of Going Rate Criterion

250.051 —In general

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract re-

quiring rate of $18 and 8 per cent commission. Present award will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston) —Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

250.960 Transit Industry Formulae

250.967 —Suburban transit line

Region XII (Seattle)

Rate of suburban bus drivers is raised from $1.00 to $1.05 per hour since (1) under national transit policy suburban rates may be raised to next five-cent interval below average transit rate in area in April 1944, (2), as result of retroactive adjustment of rate of dominant property from $1.05 to $1.08, average rate effective in area on April 1, 1944, was above rather than below $1.05, and (3) wartime changes in conditions justify reduction in differential between suburban and dominant rates, Prior denial of increase, which was based on assumption that dominant company's April 1944 rate was $1.05, is therefore reversed. (Region XII—Seattle)—East Side Busses, Inc., et al., 26 War Lab. Rep. 93.

260. WAGES—INCENTIVE WAGE SYSTEMS

260.100 Adjustment of Piece Rates

260.124 —Intra-company inequities

Lace manufacturers should grant five per cent increase in contractural minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent increase in contractual minimum thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.184 Downtime

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

265. WAGES—INEQUALITIES

265.100 Inequalities as Reason for Wage Adjustment

265.135 —Inequalities within plant

Lace manufacturers should grant five per cent increase in contractual minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

265.158 —Inequalities between unionized plants

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Higher rate is result of eight years' negotiation and present award, which is equal to rates paid by majority of industry prior to Trucking Commission's directive order fixing $18 and 8 per cent for master contract, will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston)—Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

285. WAGES—MINIMUM RATES

285.400 Increase in Minimum Rates

285.410 —Cost-of-living adjustment

Newspaper Commission's order denying union's request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to emamine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

330. WORKING CONDITIONS

330.920 Work Rules

Company should discontinue present practice of requiring employees to compute their own daily earnings, except that workers should maintain production record on form supplied by company, where union contends that (1) practice leads to confusion and disputes, (2) calculation of pay is function of management, and (3) present time allowance of five minutes is inadequate to cover time required for complicated calculations.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules. —General Motors Corp., 26 War Lab. Rep. 53.